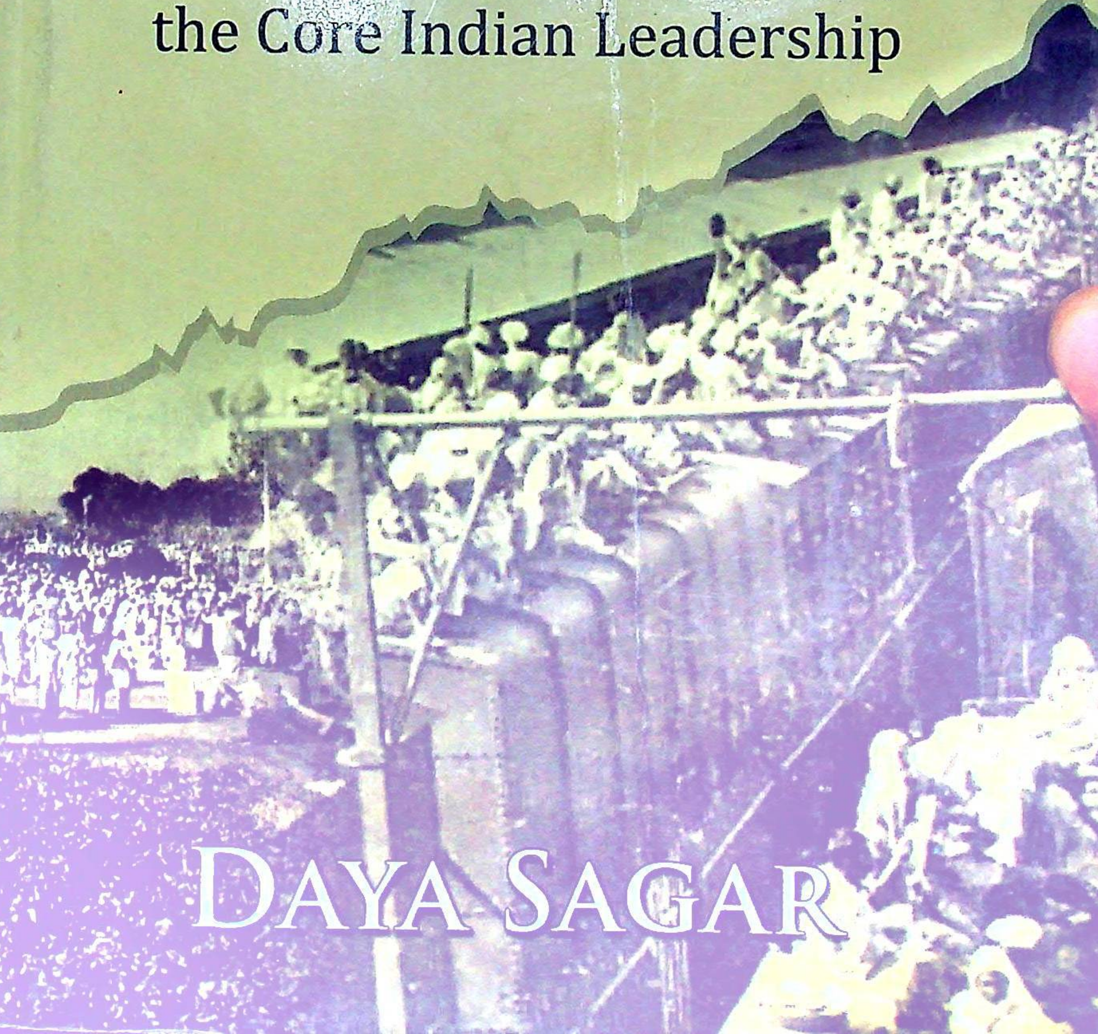
JAMMU & KASHMIR

A Victim

A Victim of Personal Ambitions
of Some and Mishandling by
the Core Indian Leadership



DAYA SAGAR

Jammu & Kashmir
A Victim

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(A Victim of Personal Ambitions of Some and Mishandling by the Core Indian Leadership)

Daya Sagar

DIVE IN THE OCEAN OF KNOWLEDGE
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by Daya Sagar

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Dedicated to the
loving memory of my late mother
Smt. Vidya Devi

Preface

After Sheikh Mohammed Abdullah was again 'installed' as the Chief Minister of J&K in 1975 by Congress, the conditions in J&K did not improve. *Rather more and more chapters on confusions and uncertainties are added every next day.* People of J&K have suffered from uncertainties since 1947. They have also been the victims of personal ambitions of some. The questions raised on the trueness of the 1947 Accession of J&K with India have not been seriously/properly addressed all these years. Result has been that the separatist ideologues and elements have been able to draw some attention. The international communities have remained misinformed. Plight of the J&K even at the internal levels (what to talk of International levels) could be seen from the fact that in 1950s, the school-going children in J&K were told stories about one Maqbool Sherwanii (a 19-year old youth, who stood against the invaders in October 1947 and was instrumental in checking the advance of Pakistan-aided intruders towards Srinagar Airport) whereas in 2013, one would hear more of Maqbool Bhat (founder of JKLF, who was sentenced to death in 1968 for killing a CID officer, who allegedly also masterminded hijacking of a civilian Indian aeroplane later in 1971 to Lahore and was later hanged in Tihar Jail on 11th February, 1984). Similarly, the position has been very briefly and precisely summed up for New Delhi/Indian Leadership by Omar Abdullah, J&K Chief Minister while speaking to Anubha Bhonsle of CNN-IBN news channel a day after the 13th December, 2001 Parliament attack convict Afzal Guru was hanged inside Tihar Jail (9th February, 2013), when he said, "I had a sense that Afzal Guru would be executed sooner rather than later. Generations of Kashmiris will identify with Afzal Guru. You will have to prove to the world that the death penalty is not used selectively. The onus rests on the judiciary and the political leadership to show that this wasn't a selective execution." Omar Abdullah should not be misunderstood, rather it should be taken as a counsel from a subject of J&K to accept that J&K affairs have not been properly (rather with needed seriousness) addressed at political, constitutional and executive levels all these years, particularly by the people who mattered more whereas the antinational elements have very wittily and cleverly made use of some literary and scholarly quotes over the years and have been able to cultivate to the benefit of their undue advantage. Many questions and doubts have either been not adequately addressed or have remained unanswered over the last six decades and some have become even the belief of the innocent and simple common people.

Now it has become very very difficult to answer even those untruthful "concepts" that have got cultivated out of even so simply fabricated explanations or stories. But there is no alternative than to start the exercise even now. So, as regards J&K affairs, deliberations need to be taken further for setting at rest the impressions or confusions created due to wrong handlings, errors committed created due to misquotes and wrong convictions.

Some of the myths have influenced the mindset of even people of the country including common man of J&K (particularly belonging to Kashmir Valley since it is the Kashmir Valley that has remained more involved in political controversies all these years). These are needed to be specifically addressed to and need to be carried into to the masses with CONVICTION.

Issues pertaining to J&K (often addressed as Kashmir) need an honest and clear understanding. Issues are of the type that needs one to keep his personal likes or dislikes on the shelf while penning on it.

The questions, querries and opinions that need to be addressed carefully and truly for carrying amongst the people of India (Jammu *and Kashmir in particular) and the world community (too) could be like (i) historical and cultural ties of Jammu and Kashmir State with India; (ii) is Kashmiriat a Nationality; (iii) can the needs/aspirations of Jammu and Kashmir be seen only in Kashmir Valley; (iv) was accession of Princely State of Jammu and Kashmir with India conditional; (v) was accession of Jammu and Kashmir made with India under any compulsions; (vi) was the text of instrument of accession signed by Maharaja Hari Singh of Jammu & Kashmir State with India different than the text of instrument of accession (wherever singed by 15th August, 1947) signed by other Princely States (vii) could any one else other than Prince of a Princely State of British Indian Empire decide for the future status/citizenship of a state after the withdrawal of British from India; (viii) did the Indian Independence Act, 1947 lay down that a Prince had to necessarily decide for making accession to Dominion of India or new Dominion of Pakistan before 15th August, 1947; (ix) why did not Maharaja Hari Singh take decision regarding acceding to either Dominion or staying Independence by 15th August, 1947; (x) was the issue of accession of J&K State a dispute in 1947; (xi) was any commitment made for holding plebiscite or referendum in Jammu and Kashmir, who made it, when was it made, was it legitimate; (xii) why did the need for UN Security Council resolutions emerge; (xiii) did Indian Independence Act, 1947 anywhere lay down that a Prince of Princely State could accede to either Dominion only for three subjects; (xiv) did the Prince still matter to the affairs of a Princely State after it acceded to either Dominion; (xv) why was Article 370 needed in Indian Constitution and that too only for Jammu and Kashmir; (xvi) what was Delhi Agreement, 1952; even after incorporation of Article 370 in Constitution of India in 1950, why was still a need felt for it when the Constituent Assembly of Jammu and Kashmir was already on JOB and had all the elected members from National Conference; (xvii) do the separatist ideologies/special orientations emerge from whole of Jammu and Kashmir; (xviii) what was the relevance of 1974 Indira Sheikh accord; (xix) is not National Conference bound with what Sheikh Abdullah Government assessed after 1974 "Indira Sheikh accord"; (xx) will not moving to pre-1953 Constitutional status would mean J&K having no Constitution and would return to Monarchy; (xxi) was Jammu and Kashmir or Kashmir*

Valley simply purchased by Gulab Singh from British; how did rule of Raja/Maharaja Gulab Singh of Jammu & Ladakh extend to Kashmir valley; (xxii) was British Paramountcy as regards the Princely States also particularly transferred to independent dominions with retreat of British and so on.

How Article 370 could be abrogated without giving a chance to a politician to exploit a Muslim or a Kashmiri Muslim has to be worked out. Will the Parliament of India forever remain helplessly looking towards Legislature of J&K is the other question that the experts need to deliberate. The concept of abrogation of this Article has to be carried, particularly the people of Kashmir valley, both technically and conceptually. Simple technicalities would not do in case India looks for long-term peace.

A very simple question could be raised by anyone who has no bias. The question is: When Article 370 was already in place w.e.f. 26th January, 1950, what was the need for entering into the Delhi Agreement in August 1952? Was Jawaharlal Nehru/his cabinet superior to the Constitution of India or the Parliament of India or the Constituent Assembly of Jammu and Kashmir {that started her proceeding on 31st October, 1951}. No doubt, it is asserted that the agreement was discussed in the Union Parliament on 7th August, 1952 and was accepted. The Jammu and Kashmir Constituent Assembly discussed this arrangement and finally adopted a motion of approach on 21st August, 1952. J&K Constituent Assembly adopted a motion of acceptance after Parliament. It could be said that the Delhi Agreement was the will of Sheikh Mohammed Abdullah endorsed by Jawahar Lal since Sheikh still feared that the Constituent Assembly of JK may not surrender fully before his desires and, hence, the Delhi Agreement was also discussed in Parliament before the J&K Constituent assembly. Moreover, in case the Constituent Assembly had finalised all its policy and draft articles/sections of the J&K State Constitution by then, then why did it take 5 more years to accept and put in force the State Constitution?

To be brief, J&K affairs have been the victim of mishandling by some core position holders in the GOI right from the times of first Prime Minister of India. Local J&K political leadership did not have much stakes except earning the vote of the common man for securing the seat of local governance.

The affairs have to be seen within the scope of the Indian Independence Act, 1947 (and Government of India Act, 1935, wherever applicable), not through the political and personal likings or disliking affecting J&K, particularly after 1945, due to which the face of J&K was allowed to be painted to the benefit of external and internal disruptive elements and ideologies.

Opinion could differ but it is the intention that matters more. The subjects like delayed accession, conditional accession, Article 370, dual citizenship, commitments made with "Kashmiries", validity of accession and many more myths cultivated which, with passage of time, covert into convictions will have to be addressed truthfully rising above all political gamesmanship/personal likes-dislikes.

And, above all, the affairs of the State of Jammu and Kashmir will have to be seen beyond the boundaries of Kashmir Valley (that forms a very small part of J&K) by anyone who ventures to look for any amicable and possible solution.

After Sheikh Mohammed Abdullah was again 'installed 'as the Chief Minister of J&K in 1975 by 'Congress', he got reviewed the status of laws operative in J&K and it was inferred that no serious correction or repealing or medication was necessary and no extensions made till then were bad in intentions or as well as results. Further, one would ask, had Indira Gandhi taken any mandate from the Parliament for signing an agreement with an individual of Jammu and Kashmir? Did she take into confidence the people of J&K, some of whom had been till then under the impression that Sheikh was dislodged in 1953 for an Act something like sedition. How could anyone make agreements at the personal level involving matters of national and international significance with individuals could be another question. Accord was settled on 13th November, 1974 between the then Prime Minister, Indira Gandhi and Sheikh Mohammed Abdullah. At the maximum, this could be called an agreement between Sheikh Abdullah and Indira Gandhi or maximum Congress.

Similarly, questions could be raised on the action of the legislators who were in the J&K Assembly on 26th June, 2000 when a resolution accepting the Report of the State Autonomy Committee was passed without commenting on the Status of Indira Sheikh Kashmir Accord *of 13th November, 1974 that had been consigned to files after a review exercise by the team appointed by Sheikh Mohammed Abdullah.*

But for all this, the people of Jammu & Kashmir from all the three major regions (Jammu, Ladakh and Kashmir valley) have paid more price and shall keep on paying till the confusions, doubts and claims are addressed in plain and simple language.

Questions should be answered to enable the common man of J&K (Kashmir Valley in particular) to make up his mind as regards the needs and affairs of J&K.

I shall be making a humble effort to draw attention of all those who are concerned towards some salient features that should be considered for addressing to questions or queries as far as possible in my limited capacity and space at hand with me.

– Daya Sagar

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1

Let There be No Debates on the History and Nationality of Kashmir

Let there be no debates on the History and Nationality of Kashmir. The State has no history other than that of Bharat. Look 5,000 years back, Kashmir could be seen as Bharat only. Awantipur in Kashmir Valley has remains of the Pandava temples. So, those who try to project J&K (Kashmir Valley, in particular) outside Bharat referring to the religion or the origin of some local rulers need not to be given importance. British did rule Bharat but the identity of Bharat did not merge with Britain. So, time should not be wasted in contesting the history of Kashmir Valley just because of the history of few hundred years' rule of local rulers and drawing out the definitions of even 'nationalities'.

□

2

Identities of Jammu & Kashmir

The oldest known history of the Kashmir Valley that could be traced through the world would not reveal anything beyond the Bharat and Bhartiya Sanskriti. Similarly, all that has happened, over centuries and millenniums, the territories of the State of Jammu and Kashmir too must be seen in the context of Bharat itself. One who would try to analyse the affairs of the State on the basis of the religion or the faith, he would only get lost in unending discussions and debates. Starting with Hindu traditions, the affairs may be traced through Buddhist, Islamic, Pathan, Sikh, Catholic traditions. But nothing will be identified alien to Indian lands and traditions.

Before the rule of Maharaja of Jammu, large part of Kashmir Valley was under the Sikh empire (also addressed as 'Lahore Darbar') of Punjab. The Kashmir Valley had also attracted other rulers—Mughals, Pathans and British most for its beauties. It has remained a scene of attraction during the past one millennium before 1947. British as well as the Maharajas of Jammu & Kashmir paid more attention to the Kashmir Valley than any other part of the State due to its pleasant summer climate and scenic beauties. Therefore, although the State was named as Jammu & Kashmir, it was, at occasions, referred in discussions and documents also as Kashmir State whereas very less reference is seen as the Jammu State, although Maharaja Gulab Singh was more identified with Jammu Empire. Further, since the Himalayan borders of India were touching

Afghanistan, China, Tibet and Russia through this State, the Kashmir Valley being part of Princely State of State was more prominently looked at by the British and, hence, the Maharaja of Jammu and Kashmir also. The influence of Mughals, Pathans and Muslim rulers too had been more on Kashmir Valley. A good number of invading soldiers and *sardars* settled in Kashmir Valley (due to which the followers of Islam increased and with passage of time, there were also more religious conversions to the Muslim religion).

Identifying the identities of Jammu & Kashmir with the religion or faith of autocratic eras of a few decades or centuries would not be fair. And if still anyone attempts to work otherwise, then Pakistan would be the most unfortunate Nation of people having no traditional history of their own. So, taking a 'bucket' of water from the Ocean and then defining the water body in the bucket with reference to only 'bucket walls' would be a too ignorant exercise.

□

3

Princely State (of the British Indian Empire) of Jammu and Kashmir

The Jammu and Kashmir State was consolidated by Maharaja Gulab Singh with the fellowship of the British Raj (East India Company). The areas of Jammu, Poonch, Pir Panchal line, Chenab line, Gilgit, Muzaffarabad and the Kashmir Valley came together as a unit during Maharaja Gulab Singh's time. Before the Kashmir Valley came under Gulab Singh (1846), most of the other regions were already a part of the Jammu Raj.

The Kashmir (Jammu and Kashmir), State of Hari Singh, that was part of the British Indian Empire in 1947, comprised of three distinct regions in the broader sense. Maharaja had, hence, classified the management of His State in three administrative units: (i) The Province of Jammu (headed by a Governor and had two jagirs also associated with it, i.e., Poonch and Chenani); (ii) The Province of Kashmir (headed by a Governor); and (iii) Ladakh headed by a Wazir-e-Wazarat.

The Pir Panchal mountain range separated the Province of Jammu from the Kashmir Valley and the Ladakh Region. Srinagar was the summer capital of Maharaja's Government after the Kashmir Valley came under the Raja of Jammu including Ladakh region also and the Maharaja of Jammu & Kashmir started moving to the Srinagar city during the summer months.

During the rule of Maharaja Hari Singh (in the early twentieth century), majority of the population of the Kashmir

Valley comprised of Muslims and the small Hindu population there comprised mostly of the Kashmiri Brahmins (Pundits) and some others who were close to the Hari Singh Government. The literacy rate of the Kashmiri Hindu was very high, whereas, at a particular time, amongst the Kashmiri Muslims, it was very low (10%). *The process initiated for restricting the jobs and lands to the outsiders after the State Subject Law of 1927 by the Maharaja was the result of the movement initiated by the Kashmiri Hindus.*

In the nineteenth century, Maharaja Gulab Singh of Jammu & Kashmir extended the geographical boundaries of India to the other side of Himalayas. Maharaja's forces even routed the Tibetian army. Raja Gulab Singh sent General Zorawar Singh, who followed the route through the Kishtwar area that in 1830s was under the rule of Raja Gulab Singh of Jammu. Even Muzafarabad was not part of the Kashmir Valley before the signing of 15th March, 1846 treaty of Amritsar between Maharaja Gulab Singh and East India Company. At that time, the Kashmir Valley was not governed by Gulab Singh. Kishtwar was with Jammu Raj under Gulab Singh. For Gulab Singh, Raja of Jammu, his Kishtwar Governor conquered the Suru valley and Kargil (around 1835), other areas of Ladakh region (1836-40) and even Baltistan by 1840 AD. Then Zorawar Singh marched towards Tibet in the east. Gulab Singh's forces {may be 6,000 to 7,000 in number} that included men from Kishtwar, Ladakh and Baltistan moved eastwards overpowering Tibetan and Chinese forces and set up a base at Taklakot near the holy Mansarovar Lake by September 1841 at a distance of nearly 725 kms beyond the point that was considered Indian frontier point at that time. Zorawar Singh's men could not continue their adventure due to extreme cold and Sino-Tibetan forces overpowered them around 12th December, 1841. Gulab Singh too was at that time engaged in Peshawar leading the Anglo-Sikh operations. The Tibetans and their Chinese allies invaded Ladakh but were defeated by the Dogras in the battle of Chushul. *The boundary (we can say Indian boundary) between Ladakh and Tibet was finally settled with the efforts of Forces of Gulab Singh with the Treaty of*

Chushul. This treaty was later violated by the rulers of China in the 1950s.

The State of J&K ruled and administered by Maharaja Hari Singh was larger than the princely state of Hyderabad. J&K was two-third of the size of Bombay Presidency and was larger than the States of Mysore, Bikaner, Gwalior and Baroda put together. *The total area of J&K as mentioned in Annual Administrative Report of the J&K State for the Samvat 1997/98 Vikrami (16th October, 1940 to 15th October, 1941 AD) including jurisdictional Jagir of Poonchh and Chenani is approximately 86,080 sq. miles/2,23,127 sq. km. (84,471 sq. miles/2,18,957 sq. km. plus 1,600 sq. miles/4,147 sq. km. plus say 9 sq. miles/23 sq. km.)* and lies between 32.17 and 36.58 North Latitude and 73.26 and 80.30 East Longitude and was the largest Indian State of pre-1947 days. In addition to a small strip of land along the borders of Jammu (a continuation of great plains of the Punjab) and a bleak tract adjoining the Karakorum Mountains, the territories of the Maharaja of J&K included valleys formed by the Chenab and Jhelum rivers and the middle reaches of the Indus. On the north, it was bounded by Chinese and Russian Turkistan, on the east by Tibet, on the south by the Punjab and on the west by the North-Western Frontier Province. The territories of three powers viz. Britain, China and Russia and the Independent kingdom of Afghanistan met at the Northern Borders of the State in 1947. *In 1935, when Soviet Russia nearly overran Eastern Turkistan, the British executed an agreement with Maharaja Hari Singh and took Gilgit on lease under which the administration and defence of Gilgit became the subject of the British. An irregular corps, the Gilgit Scouts was raised for the purpose. In 1947, Gilgit was administratively/technically transferred back to Maharaja.*

□

4

Vital Statistical Images of the Pre-October 1947 and Post-1947 face of Indian State of J&K

Almost all the subjects of J&K, who were displaced from Pakistan occupied areas of the Indian State of Jammu and Kashmir in 1947 are staying in the Jammu Region (outside the Kashmir Valley). Their issues and claims have remained unresolved and almost not addressed for over 65 years. Most of them are non Kashmiri speaking. May be due to this they have remained neglected. Neither Kashmir Valley leadership has promoted their cause nor the Government of India has shown seriousness. It may be that the Government of India remained overoccupied with the issues related to "Kashmir Valley" or demands or questions and ideologies raised from there. These displaced persons have not been given adequate socio-economic support so far which could be quoted.

Refugees, who entered J&K in 1947 from West Pakistan, were made to stay in J&K by Maharaja Hari Singh. All of them stayed in the Jammu Region. These people are staying in J&K for the last 65 years and have not been accepted as Permanent Resident of J&K. Hence, they can neither join Government Engineering, Medical or any other Professional Colleges as run by the J&K Government, nor can they join the J&K Government Service. They belonged to the backward classes and their educational, social and economic backwardness has further grown. Objection to granting them PRC has come only from the Kashmir Valley leaders since they have no sociocultural similarity with the Kashmir Valley people.

The stretch of Line of Control (LOC) and International Border (IB) is more alongwith the Jammu Region as compared to the Kashmir Valley. The people living thereby often are disturbed and uprooted due to disturbances from the Pakistan side. No policy or programme has been made by the Government of India as well as the State Government for their regular rehabilitation over the years. This has also been acknowledged on the floor of the Legislative Assembly by the J&K Government even in 2013. May be it has been due to the fact that such areas do not fall in the Kashmir Valley. The education, agriculture, trade and health of these people are in a miserable condition and need very very special attention.

J&K was affected with militant activities very acutely in 1989. The backward and far-flung areas of the Jammu Region falling in Doda, Rajouri, Poonch, Udhampur, Kathua, Ramban and Reasi too were badly affected. These people were educationally, professionally and economically backward and many of them dependent on meager assistance and live stock earnings. They came under militant pressures. Both Hindus and Muslims suffered badly. Many had to leave their houses. Many got killed and permanently disabled. But they have not been given proper attention by Kashmir Valley-centric J&K Leaders and the Government of India in terms of relief and rehabilitation. Many returned back to live in miserable condition. They have lost lives, health, education and what not. They have been running from pillar to post for support and even have gone to courts but have not been addressed by the Government of J&K, who is supposed to take their case as first priority with the Government of India but has failed to do so in the last 25 years.

Some elements are working to divide people of J&K on communal lines. Some foreign agencies are also working in this regard. Making Jammu a separate State may also help in checking such designs.

Vital Statistics Table—A

S.No.	*Reference*	*Jammu Region*	*Kashmir Region*	*Ladakh Region*
1.	Number of Districts during Maharaja Times	5 (Jammu, Kathua, Udhampur, Reasi and Mirpur)	3 (Anantnag, Baramulla and Muzaffarabad)	
	Number of Tehsils	17 plus two Jagirs	10	
2.	Number of Jagirs during Maharaja Times	2 (Poonch and Chenani)	Nil	
3.	Area (August 1947)	32,145 + 4,170 = 36,315 sq. km. or 14,010 sq. miles 16.27% of the State	22,133 sq. km. or 8,539 sq. miles 9.92% of the State	1,64,739 sq. km. or 63,554 sq. miles 73.8 1% of the State
	Regionwise percentage of area (Aug 1947)			
	Area excluding the areas occupied by Pakistan in 1947	26,293 sq. km.	15,948 sq. km.	96,701 sq. km.
	Area occupied by Pakistan in 1947	10,017 sq. km. 27.58% of Jammu region or 4.5% of the State	6,185 sq. km. 27.94% of the Kashmir region or 2.79% of the State	68,038 sq. km. 41.3% of the Ladakh region or 30.65% of the State

(Contd.)

(Contd.)

4.	Population 1941 Census	20,10,557	17,28,686	3,11,915
5.	Areas occupied by Pakistan	Mirpur District and small part of Poonch	Muzaffarabad	Gilgit/Baltistan
6.	Districts excluding POJK	4 plus two Jagirs	Just 2+	
	Districts made in J&K after 1947 (excluding Areas occupied by Pakistan)	6—Jammu, Udhampur, Doda, Kathua, Rajouri, Poonch	3 Anantnag, Srinagar, Baramulla	Leh
	Districts made in 1979 vide government orders	Kept as only 6	Raised from 3 to 6 by SRO 306 of 6/6/1979—Srinagar, Badgam, Anantnag, Pulwama, Baramulla, Kupwara	2—Kargil and Leh
	Districts as recommended by Wazir Commission (1981) in 1984	6 + 3 new = 9	6 + 1 new = 7	2
	Districts made by Congress PDP G.N. Azad Government in 2006/07	6 + 4 = 10	6 + 4 = 10	2

(Contd.)

(Contd.)

7.	Elected MLC in Legislative Council as per Section 50 of J&K Constitution	14	12	2
8.	MLAs in J&K Assembly before 1995 Delimitation as got distributed through unfair delimitations ignoring the ground facts like Section 50 of JK Constitution and Section 4 (2a) of RPA 1957	31 + 1 = 32	42	2
	MLAs as per 1995 Delimitation order of K.K. Gupta Commission	37—Section-4(2a) of RPA ignored. Population, Geographical Compactness, Nature of Terrain, Facilities of Communication and like considerations.	46—Jammu Region has much larger area (less compactness), bad terrain, much less road networks and communication facilities as compared to the Kashmir Valley.	4
9.	MPs (Members of Parliament)	2	3	1
10.	Population as per 1981 Census	27,18,113	31,34,909	1,34,372

(Contd.)

(Contd.)

	Population 2001 Census .	43,95,912 *Questions have been raised on census figures that were released	54,41,341 (*large increase inspite of migration and militancy)	
	Voters as per 2002 Assembly Elections	*28,92,000	*25,46,000	
11.	Area excluding POJK	26,293 sq. km.	15,948 sq. km.	96,701 sq. km.
12.	Settled displaced people from POJK	Almost all	Nearly nil	
13.	Settled refugees from West Pakistan as accommodated by Maharaja in 1947	Almost all who came	Nil	
14.	Displaced persons due to militancy that hit J&K in 1989	Majority stayed/stays in Jammu Region	No displaced families stayed back in the valley	Nil
	Displaced persons from Pakistan occupied areas of Indian State of J&K and Refugees from West Pakistan	Majority stayed/stays in Jammu Region		

(Contd.)

(Contd.)

15.	Disturbed Line of Control and International Border (LOC & IB)	Much larger along Jammu Region as compared to the Kashmir Valley	Smaller part of LOC	Larger part of LOC
16.	Government-managed Medical Colleges	2	4	

□

5

Need for Clearing Some Misunderstandings

To many the State of Jammu and Kashmir is KASHMIR. No doubt, even in British times, the Princely State of Jammu and Kashmir was often times referred to as the KASHMIR State, but such a reference has made perception of many people that the Jammu and Kashmir State prominently comprises of the Kashmir Valley only whereas the Kashmir Valley is a small part of the Jammu and Kashmir State.

A brief review of the Geo-Administrative order of Maharaja Hari Singh's Princely State of the British Indian Empire would give some true understanding about the Jammu and Kashmir State and affairs of this most discussed Indian state. As already stated, earlier in the nineteenth century, Maharaja Gulab Singh of Jammu and Kashmir extended the geographical boundaries of India to the other side of the Himalayas. Maharaja's forces even routed the Tibetian army. The great general of Raja Gulab Singh's Zoravar Singh had followed the route through Kishtwar in 1830s since, at that time, the Kashmir valley was not governed by Gulab Singh. The Jammu and Ladakh regions were already parts of Jammu Raj before the control of the Kashmir Valley was also transferred to Jammu Raj (Maharaja Gulab Singh) on 15th March 1846 by the East India Company through a treaty as the Kashmir Valley had been surrendered to the British India by the Punjab Sikh Empire as a compensation for the battle the Sikhs lost to the British in 1846. Since then, the Jammu Raj was named as the State of Jammu and Kashmir.

A fair and honest trial could be done by looking at the structure of Civil Administration given to J&K by Maharaja Hari Singh.

Civil Divisions/Administration

For the purposes of civil administration, the state was divided into three parts: 1. Province of Jammu (approximately 14,010 sq. miles/36,315 sq. km). It had 5 Districts (17 tehsils) and 2 jurisdictional Jagirs, 2. Province of Kashmir (8,569 sq. miles/22,000 sq. km.). It had 3 districts (10 tehsils), 3. District of Ladakh. The head of revenue administration in each province was a Governor. Ladakh district was under a Wazir Wazarat.

The regionwise area details mentioned in the administrative report of the State of Jammu & Kashmir (16th October, 1940 to 15th October, 1941 are Jammu province was 36,315 sq. km. (32,145 sq. km. + 4,170 sq. km)/14,010 sq. miles (12,401 sq. miles plus approximately 1,609 sq. miles of Jagirs), the area of the Kashmir Province/Jhelum Valley was 22,133 sq. km. (8,539 sq. miles), the area of the district of Gilgit and frontier Illaquas of Skardu, Ladakh and Kargil was 1,64,739 sq. km. (63,554 sq. miles). As per the website of J&K Raj Bhawan (10th April 2013) (reference), the total area of the State is 2,22,236 sq. km. including 78,114 sq. km. under the illegal occupation of Pakistan and 42,685 sq. km. under that of China. (the data on websites under Pakistan control—so-called 'Azad Kashmir', i.e., Mirpur/Muzaffarabad, etc. 13,297 sq. km.; Gilgit/Baltistan Northern areas 72,496 sq. km.—and even in some other official documents could be with some variations but the differences need not matter for reviews like the one being made here). Surveyor General of India had issued provisional figures as 2,22,236 sq. km. Subject to verification for taking a general note of the situation, the J&K territories under illegal occupation and control of Pakistan and China (as per the J&K Raj Bhawan website) could be said as about 54% of area (4.5% is from the Jammu province, 2.78% from the Kashmir region and rest is from the Ladakh region). The present area that is often covered for elections from the Jammu region is about 162% of the Kashmir region (on overall basis, the times of Maharaja Hari Singh Jammu region could be said as 174% of the area of the Kashmir Valley). Excluding the areas occupied by Pakistan in 1947, the area left in the Jammu region was around 26,293 sq. km. (out of the total of 32,145 sq. km. + 4,170 sq. km. Poonch and Chenani Jagirs = 36,315 sq. km.), as left in the Kashmir region was 15,948 sq. km. (out of the total 22,133 sq. km.) and in the Ladakh region around 96,701 sq. km. (out of the total 1,64,739 sq. km.).

Control of 5,180 sq. km. of areas out of the areas occupied by Pakistan in October 1947 was given by Pakistan to China in 1963 (it has also been confirmed by the Government of India in reply to Rajya Sabha Question No: 367 from Chandra Mitra on 15th March, 2012).

The Kashmir Province (8,539 sq. miles/22,000 sq. km.):

In 1947, the Geographical Division of J&K comprising of the Jhelum Valley (consisting of the valleys that drained into the Jhelum and Krishna Ganga rivers) and the lateral valleys of the Sind as well as that of Liddar together form the famous Kashmir Valley. The Kashmir Valley along with the hilly track of Muzaffarabad is included in the Kashmir Province. It is the Kashmir Region of today. The Kashmir Valley, along with the hilly track of Muzaffarabad, included in the Kashmir Province the Princely State of Jammu and Kashmir, was also referred to as the KASHMIR State, but such a reference has made many people feel that the Jammu and Kashmir State prominently comprises of the Kashmir Valley only, whereas the Kashmir Valley is a small part of the Jammu and Kashmir State.

Province	*District*	*Tehsil*	*Niabat*
1. Kashmir	1. Anantnag	1. Anantnag.	—
		2. Kulgam	—
		3. Awantipura	—
		4. Srinagar	—
	2. Baramulla	1. Baramulla	—
		2. Sripratapsinghpura	1. Gurez
		3. Uttarmachhipura	2. Sopore
	3. Muzaffarabad	1. Muzaffarabad	
		2. Uri	
		3 Karnah	

Jammu Province: (approximately 14,010 sq. miles/36,315 sq. km.). It extended over the semi-mountainous and sub-mountain tract consisting of the plains contiguous to the Punjab and broken Kandi country skirting the Himalayan ranges. The rivers Rabi, Chenab and Jhelum, and several perennial streams flowing through. The hills in Bhaderwah, Doda and Kishtwar formed part of this Division. Jagirs of Poonch and Chenani too were with this Province. This Division comprised the whole area covered by the ranges of low hills to the south of Pir Panjal Mountains, which divide the two provinces of Jammu and Kashmir.

Province	*District*	*Tehsil*	*Niabat*
2. Jammu	1. Jammu	1. Jammu 2. Samba 3. Akhnoor 4. Ranbirsingh Pura	— — — —
	2. Mirpur	1. Mirpur 2. Bhimber 3. Kotli	1. Noushera — —
	3. Udhampur	1. Udhampur 2. Ramban 3. Ramnagar 4. Bhadarwah 5. Kishtwar	— — — — —
	4. Reasi	1. Reasi 2. Rajouri	1. Gulabgarh —
	5. Kathua	1. Kathua 2. Jasmergarh 3. Basoli	 —
3. Jagirs*	*Jurisdictional	1. Poonch Jagir	2. Chenani Jagir

*Jurisdictional 1. Poonch Jagir 2. Chenani Jagir

District of Ladakh (63,554 sq. miles/1,64,748 sq. km.): The Tibetian and Semi-Tibetian tract, that consisted on middle reaches of the Indus formed this Division (Ladakh District of Maharaja's Administration comprising of district of Gilgit and the frontier illaquas of Skardu, Ladakh and Kargil). The river Indus having its source in Mansarovar lake in Tibet traversed the whole of this Division (district) running from south-east up to the bend around the Nanga Parbat, where it assumes a south westerly course. Except in Gilgit, the ranges in this Division vary from 17,000 feet to 22,000 feet.

Crop area in Ladakh was very small. Mountains in the North stretch up to Pamirs. Mount Godwin Austen, 28,265 feet above MSL was the second highest known peak in the world. Bhotia and Shina spoken in Ladakh and Gilgit remained confined to Ladakh.

Province	*District*	*Tehsil*	*Niabat*
*	1. Ladakh *Ladakh had direct Administration Under a Wazir Wazarat	1. Ladakh 2. Kargil 3. Skardu	– – –

A store was under a Revenue Assistant and Ladakh had nearly Direct Administration under a Wazir Wazarat. *In 1935, when Soviet Russia nearly over-ran Eastern Turkistan, the British executed an agreement with Maharaja Hari Singh and took Gilgit on lease under which the administration and defence of Gilgit became the subject of the British. An irregular corps, the Gilgit Scouts was raised for the purpose. In 1947, Gilgit was administratively/technically transferred back to Maharaja.* Frontier illaqas of Skardu, Ladakh and Kargil 63,554 square miles (1,64,739 sq. km.). The population was very sparse.

In Jammu Province of erstwhile Princely State of Maharaja Hari Singh, the Muslim formed a large portion of population but the Jammu Province still extended over larger part of the domain as compared to the Kashmir Province without any communal overtones and considerations whereas a just and rational segmentation of the civil administration looking at the ethnic/cultural/geographical physicals for the welfare of the masses had been the prime consideration with Maharaja. On the whole, the Muslim population was nearly 77% of total population of the State as per 1941 census.

Since the common man has very less information and is innocent, some have succeeded in even terming the demand for separate State of Jammu – extending over the territories of the Jammu Province of the State of Jammu and Kashmir as a Hindu dominated area demand, which is surely a wrong propaganda.

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6

Unrest against the British

The visibility of the Indian Independence Movement increased in the year 1920. Indian National Congress was in the lead line. Even Muhammad Ali Jinha was a top Congressman. The oneness of Hindu and Indian Muslims had shaken the British Company Raj in 1857. So, thereafter, the 'divide and rule' game plan was skillfully used by the British. It was in 1930s that British could prompt the Muslim voice for the division of India (in the event of British retreat as and when it would be). The British used sweet traps to rope in the Princes too. Economic poverty as well as the social civic diverse traditions amongst the Hindu was used to further fragment the Hindu society.

But since the Mughals (more identified with Jalaluddin Akbar) had accepted Bharat as their own country and most of the Muslims were converted from Hindus having same language and traditions. Hence, the Hindu-Muslim ties were strong enough to be torn apart so easily. Similarly, the leaders like Maulana Abul Kalam Azad and Baba Saheb Bhim Rao Ambedkar proved tough for the British to succeed in their evil designs. But still some Muslim leaders fell prey to the British designs and vouched for a separate country only for Muslims (Islamic Pakistan).

No doubt, at that time, there was a very large chunk of Muslims in India who did not want partition or separate Islamic state. It was also quite evident that as and when Islamic Pakistan would be created; there will still be a very large number of

Muslims that will stay back in India. Sheikh Mohammed Abdullah was a Kashmiri muslim (later became the leader of Jammu Kashmir Muslim Conference), who was working in 1930s for the welfare of Kashmiri muslims during the rule of Maharaja Hari Singh. On All-India basis, it was Muslim league that was activated by Muhammad Ali Jinnah after he returned from exile (from Britain). Jinha was a Congressman earlier and talked of Pakistan for Muslims. The British also succeeded in raising doubts in his mind for the socio-economic security of Muslims in Hindu majority India. Sheikh Mohammed Abdullah preferred to stay away from Jinnah because of his policies. He later came closer to Jawahar Lal Nehru and became Nehru's dearest "friend". In a calculated move, he opened the doors of Jammu Kashmir Muslim Conference to non-Muslims as well. In 1939, Muslim Conference was renamed as National Conference.

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7

British Cabinet Mission and Indian Princes

The British Cabinet Mission (headed by Lord Pethick-Lawrence, the British Secretary of State for India) on India presented a Memorandum on 12th May, 1946 to Chancellor of Chamber of Princes in India (Nawab of Bhopal). The memorandum on State Treaties and Paramountcy briefed about the potential/possible future of Princely States. **Para {2} of the memorandum said:**

> *'that during the interim period, which must elapse before the coming into operation of a new constitutional structure under which British India will be independent or fully self-governing, paramountcy will remain in operation. But the British Government could not and will not, in any circumstances, transfer paramountcy to an Indian Government.'*

Para {4} of the memorandum said:

> 'During the interim period, it will be necessary for the States to conduct negotiations with British India in regard to the future regulation of matters of common concern, especially in the economic and financial field. Such negotiations, which will be necessary, whether the States desire to participate in the new Indian Constitutional structure or not, will occupy a considerable period of time. And since some of these negotiations may be incomplete when the new structure comes into being. *It will, in order to avoid administrative difficulties, to arrive at an understanding between*

the States and those likely to control the successor Government or Governments that for a period of time the then existing arrangements as to these matters of common concern should continue until the new agreements are completed. In this matter, the British Government and the Crown Representative will lend such assistance as they can, should it be so desired.'

Para {5} said:

'When a new fully self-governing or independent government or Governments come into being in British India, His Majesty's Government's influence with these Governments will not be such as to enable them to carry out the obligations of paramountcy. Moreover, they cannot contemplate that British troops would be retained in India for this purpose. Thus, as a logical sequence and in view of the desires expressed to them on behalf of the Indian States, His Majesty's Government will cease to exercise the powers of paramountcy. This means that the rights of the States which flow from their relationship to the Crown will no longer exist and all the rights surrendered by the states to the paramount power will return to the States. *Political arrangements between States on one side and the British Crown and British India on the other will thus be brought to an end. Keeping the spirit resting in the memorandum since Paramountcy was to practically lapse (as regards the British commitments on treaties) on 15th August, 1947, the Princes were free to accede to one or the other dominion. Of course, the obligation of British to defend their boundaries was to lapse and not transfer. The void will have to be filled either by the States entering into a federal relationship with successor Government or Governments in British India, or failing this, entering into particular political arrangements with it or them.'*

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8

Quit Kashmir Call, Nehru, Patel, All India State People's Conference

In May 1946, Sheikh Mohammed Abdullah's National Conference launched 'Quit Kashmir Movement'. Sheikh's call had surprised even the Indian leaders. Sheikh did have the support of Jawahar Lal Nehru. 'Quit Kashmir' call was on the lines of Quit India movement. But the call was not against the British Crown. The 'Quit Kashmir' call was against the Maharaja. Even Muhammad Ali Jinnah termed it as an agitation of a few 'mal' contents, who were out to create disorder in the J&K State. It was on Pandit Nehru's instructions and encouragements that even 'Kashmir Day' was observed in Srinagar on 2nd June, 1946.

Sardar Vallabh Bhai Patel, while addressing the General Council of the All India State People's Conference on 8th June, 1946, advised the subjects of Princely States not to get involved in the direct isolated actions in states happening that moment. He asked the people to be patient and carry on the agitation peacefully for responsible government. But Nehru, in the case of J&K, did not hold fast to Sardar Patel's advice. Therefore, the circumstances in J&K from August 1947 onwards landed both Maharaja and the Government of India in a grave problem where Sheikh stood on the wheel with rope in his hand. It was only in the previous year on 26th September 1947, when Sheikh was at the mercy of Maharaja Hari Singh as well as the Government of India and Nehru providing him moral and personal support. Nehru's support to Sheikh fuelled the ambitions of a few local leaders (though very small in numbers) of Kashmir and those in favour of the two-nation theory.

9

Sheikh Abdullah wanted a Different Plan of Action for J&K

The love that Nehru showed for Sheikh Abdullah, the closeness that Nehru had with Mountbatten and the manner in which Nehru overlooked the 'Quit Kashmir' movement that Sheikh Abdullah's NC launched in May-June 1946 had agitated Hari Singh. But since Nehru did not reject 'Quit Kashmir' call of the National Conference, Sheikh Mohammed Abdullah was encouraged and he extended the vision of 'Quit Kashmir' call beyond the Kashmir Valley. Now he was eyeing on whole of the State of Jammu and Kashmir.

In view of the apparently changing approach of the National Conference, Maharaja's government arrested Sheikh Abdullah and some other NC leaders on 20th May, 1946. In June 1946, Nehru decided to visit Kashmir to support and defend Sheikh's case. But Nehru was detained at Kohala Bridge by Maharaja's forces. Nehru did not appreciate it. Abdullah was tried on charges of sedition and sentenced to three years of rigorous imprisonment in July 1946. Under the demands of the then Government of Independent India, Sheikh Mohammed Abdullah was released from jail after Sheikh Abdullah pledged loyalty to Maharaja Hari Singh on 26th September, 1947. By this time, 15th August, 1947 had passed. All India State People's Conference had drawn out a policy paper with regards to immediate local governance in the Princely States of British India after they accede to Indian Dominion and then the constitutional drafts are finalised. The Prince was the head of the State and the local Government of the people had to work under the guidance of the Dewan/Prime Minister of the Prince till the final arrangements for the governance of even the Dominion were drawn out. Sheikh Abdullah wanted a different plan of Action for J&K. Nehru too wanted to treat J&K as an exception (I have not been able to find any logical justification). Of course, Vallabh Bhai Patel had differed in principle with Nehru. Maharaja Hari Singh was hence not making his plans open in terms of *Cabinet Mission memorandum dated 12th May, 1946 as was presented to the Chancellor of Chamber of Princes in India and the Indian Independence Act, 1947. He* was making consultation. □

10

Nehru's Support to Sheikh Abdullah Annoyed Maharaja Hari Singh

Nehru indirectly supported the memorandum of the Working Committee of Cabinet Mission sent by the British Government to India and raised questions on Amritsar Treaty of 16th March, 1846. The treaty between the East India Company (British Government) on one part and Maharaja Gulab Singh of Jammu on the other, concluded on the part of the British by Frederick Currie, Esq. and Brevet-Major Henry Montgomery Lawrence acting under the orders of the Rt. Hon. Sir Henry Hardinge, G.C.B.

One of Her Britannic Majesty's most Honorable Privy Council, Governor-General of the possessions of the East India Company, to direct and control all the affairs in the East Indies and by Maharaja Gulab Singh in person in 1846. This was demanded that with the British retreating from INDIA, this Treaty be abrogated and Kashmir be taken to be ruled by the people of the State, who should decide the future of Kashmir/ later JK State and not by the Maharaja. British were to handover the power to Congress leadership in India; so, it was demanded that with the annulment of Treaty of 1846, Maharaja's government should be passed on to Sheikh Abdullah's National Conference. This demand of Sheikh Abdullah (May 1946) became a cause of the growing tension between Sheikh Abdullah, Nehru and Maharaja Hari Singh. Sheikh Abdullah launched the 'Quit Kashmir' movement against Maharaja Hari

Singh without consulting Congress party. Nehru supported this movement. Due to backing of Nehru to Sheikh Abdullah, Maharaja annoyed and even may have become a reason to think of Independent State as an alternative for which his supporters could advance arguments. But surely it was the cause for Hari Singh not being eager to sign accession immediately with India, although he had no liking for Pakistan.

Jawarhar Lal Nehru himself said on 26th May, 1946 that it had been the policy of All India States People's Conference to demand full responsible popular government in all the States under the aegis of the Ruler (the Prince), who is to act as a Constitutional head of the State concerned. But to justify his special approach with regard to J&K (Sheikh Abdullah & Kashmir), he accused the State authorities of pursuing policies of direct hostility to the proposed popular movement in Kashmir. Surely this argument of Nehru was not truthful. Later in December 1947, *Nehru had first agreed that after accession Maharaja Hari Singh should notify for the formation of interim Government in Jammu and Kashmir on a model similar to Mysore model but later on backed out from that. This only manured so far the feeble plans of Sheikh Mohammed Abdullah.* Nehru had admitted that the new policy (Quit Kashmir) which was made public by Sheikh on his own was very unfortunate. As it was a marked variation from the policy of both Congress as well as the All India States People's Conference (AISPC), it should not had been made public without full consideration of the respective bodies. He further added that he *(Nehru) liked to make it clear that the policy of AISPC remained what it was, i.e. responsible government under the aegis of the ruler. But Nehru did not make any attempts to correct Sheikh Abdullah and he was delayed in giving his remarks. India is paying price even after 6 decades.*

With respect to the sequential incidents and the inclination of Nehru, Indian Congress favoured Sheikh Abdullah in 1940 and after 1947, whereas it had to stand to support for timely accession of J&K with Indian Dominion (Bharat). No doubt, the Maharaja of J&K was the only designated authority regarding accession with either Dominion of India or Pakistan.

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11

Princely States, Princes and Dominions

India Independence Act was passed by British Parliament on 17th June, 1947 to make provisions regarding the setting up of two independent Dominions of British India and to substitute other provisions for certain provisions of the Government of India Act, 1935, with the setting up of those Dominions which apply outside those Dominions, and to provide for, other matters consequential on or connected. *The future of Princely States had already been somewhat defined in memorandum dated 12th May, 1946 on States Treaties and Paramountcy presented to Nawab of Bhopal to Chancellor of Chamber of Princes in India by Cabinet Mission.* The British Parliament's Indian Independence Act, 1947 received Royal Assent on 18th July on the same year creating two independent Dominions of India and Pakistan out of the British India Provinces.

The Act was also in a way to free the Indian Princely States of Indian British Empire from the Crown's paramountcy but denied them dominion status while advising them to accede to India or to Pakistan in their own interest. The power was transferred to the people in British India. The Government of India Act, 1935, as adopted in the Indian Independence Act, 1947, provided:

'An Indian State shall be deemed to have acceded to the Dominion if the Governor General has signified the acceptance of an Instrument of Accession executed by the ruler thereof…..'

Pakistan and even Britain were party to these provisions. So, the choice of joining either of the Dominions was left to the vRulers of the States concerned. Moreover, in the Indian Independence Act, 1947, there was no provision for any conditional accession.

The Mountbatten Plan about partition of India and withdrawal of British from India by 15th August, 1947 was announced on 3rd June, 1947. This plan theoretically conceded an independent status to all the Princely States of Greater India of the British Empire after the lapse of British paramountcy. The Plan also advised the princes that it was in their own interest (as well as in the interest of dominion of India and that of new Dominion of Pakistan) to join one of the two Dominions before 15th August (the deadline for British withdrawal). Obligation of British to defend their (Princely States') boundaries was also to lapse. Hence, the preparations for the future status, policy or working arrangements had started in 1946 itself at the level of Princes, the proposed Governments of Pakistan and India as well as the local leaderships in some States and J&K in particular. As per the Cabinet Mission memorandum (12th May, 1946) also, with the lapse of Paramountcy, the princes were free to accede to one or the other dominion. Maharaja of Jammu and Kashmir did not accede to either dominion upto 15th August, 1947. Rather he offered a standstill agreement to both India and Pakistan, Pakistan accepted it, but India wanted to discuss.

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12

Final Radcliffe Award on Boundaries could also be the Reason

The Governor General of India, Lord Mountbatten visited Srinagar on 19th June, 1947 for four days. Mountbatten found Maharaja elusive and returned without discussing with him.

As per the evidence available at that time and under the likely proposed plans, Gurdaspur District was to be the part of Pakistan. Mountbatten knew that J&K would have no immediate existing link road available with India as per the draft plan of boundaries made known till 14th August, 1947. Later on, the Radcliffe award was announced, which stated that retained parts of Gurdaspur District including Pathankot as part of Indian independent Dominion. This was announced only on 16th/17th August, 1947 i.e., after 15th August, 1947. Lord Mountbatten, the then Governor General of India, knew the importance of this award. He also knew that in the absence of the award, J&K would have had no immediate operational road or rail link with the Indian Dominion in case Maharaja decided in favour of India before 14th August, 1947. Hence, there are reasons to assess that he (Mountbatten) was not for India.

Why was Radcliff award made public after 15th August? A crude border had already been drawn up by Lord Wavell, Viceroy of India prior to his replacement in February 1947. He was replaced by Lord Louis Mountbatten. As per the Indian Independence Act of July 1947, Section 4, Schedule II:

'DISTRICTS PROVISIONALLY INCLUDED IN THE NEW

PROVINCE OF WEST PUNJAB (West Pakistan) were from the Lahore Division, the districts of Gujranwala, Gurdaspur, Lahore, Sheikhupura and Sialkot, from Rawalpindi Division, the districts of Attock, Gujarat, Jhelum, Mianwali, Rawalpindi and Shahpur. And from the Multan Division, the districts of Dera Ghazi Khan, Jhang, Lyalipur, Montgomery, Multan and Muzaffargarh.'

In order to determine exactly which territories to assign to each country, in June 1947, the British Government appointed Sir Cyril Radcliffe as the Chairman for the Boundary Commission for Bengal and Boundary Commission for Punjab. The Commission had to advise to demarcate the boundaries of the two parts of the Punjab on the basis of contiguous majority Muslim areas and non-Muslim areas. Of course, there were some other undefined factors to be considered like natural boundaries, communications, watercourses, irrigation systems, as well as socio-political consideration. The Commission had two representatives from the Indian National Congress and two from the Muslim League. Radcliffe reached India in the second week of July 1947 (may be 8th July) and had just 5 weeks to complete the most hard task. He expressed concern on the short timeframe, but succeeded to finish the task by 15th August. Mountbatten was very particular for an early deadline for completing the partition. No doubt, the Radcliffe completed the job a couple of days before 15th August, 1947 (Date of British withdrawal). For unknown reasons, the Radcliffe award on borderlines was made public on 17th August, 1947, two days after the grant of Independence to India and Pakistan. The Radcliffe Line became the border between India and Pakistan on 17th August, 1947.

Gurdaspur district, except for the sub-division of Shakargarh, was given to India. Gurdaspur was a large district of British India. It included Deoband, Bareilvi and Kadian as well as culture centres of Ahmadiya community. The district had Muslim population of a little over 50 percent including Ahmadiyas, who had been declared non-Muslim by some Muslim clergies. (Ahmadiya's spiritual center was at Qadian in the Gurdaspur district). The tehsils of Shakargarh and

Gurdaspur had a Muslim majority of 51% each; Batala tehsil had a Muslim majority of 53%; Pathankot tehsil had a majority of non-Muslims at 67%. Only Shakargarh tehsil separated from the rest of the district by the Ravi river was awarded to Pakistan, leaving the rest of the district with a slight majority of non-Muslims. Another point was that Batala and Gurdaspur would provide a buffer to the Sikh holy city of Amritsar, which otherwise would be surrounded by the Muslim territory of Pakistan. The last point that was argued before the boundary commissions was that if the area east of the Ravi river was considered as one block, consisting of Amritsar and most of Gurdaspur district (excluding Shakargarh), it would have a slight non-Muslim majority. Also, by doing this, the majority of the Sikh population (58%) would fall in East Punjab; by doing the opposite, a slight majority would be left in Pakistan and this would increase the number of Sikh refugees. This could pacify the Sikhs because they lost major tracts of lands in West Punjab. Although in larger probability, Pathankot tehsil would have gone to India as it had a direct rail-road link with the adjoining areas of Hoshiarpur and Kangra districts of East Punjab. But fears were there that the mention of Gurdaspur district in Schedule 2 of the Indian Independence Act may create problems to the Jammu and Kashmir State in case it acceded to India. Even if Maharaja Hari Singh had otherwise intentions, still he could defend the delay in accession due to such reasons. Similarly, the intention of Radcliffe to transfer Ferozepur and Zira tehsils to Pakistan was opposed by the Maharaja of Bikaner because Harike headworks on the confluence of the Satluj and Beas rivers, the only source of water for his desert state was in Ferozepore. It was only after he told Mountbatten that he would accede to Pakistan if Ferozepur was awarded to West Punjab, award was changed at the last minute, awarding the Ferozepur district to India.

Maharaja Hari Singh did have an excuse for not taking decision before 15th August, 1947. Under the interim division of the British India as proposed in the India independence Act, 1947, the district of Gurdaspur that included rail head of

Pathankot, the only road link between Jammu and East Punjab had first been included in West Pakistan (District Gurdaspur was to be the part of West Panjab). The announcement of the Radcliffe Award that awarded some areas of Gurdaspur/ Pathankot to India was made public after 15th August. Hence, Maharaja Hari Singh could be in a fix to take a decision for accession with India before 15th August, 1947. It has been opined that the announcement of the Radcliffe Award was intentionally delayed by Mountbatten, who did not want Hari Singh to accede to India and, hence, Maharaja was kept under pressure, could be argued. Till early 1946, anti-British attitude and progressive ideas of Hari Singh had been irritating British Raj, more particularly after he attended the Round Table Conference of 1930 as Chancellor of Chambers of Princes.

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13

Was Nehru's Nominee Sheikh the Cause for Delay

No doubt, Hari Singh deferred accession even after the *announcement of the Radcliffe Award (16th/17th August, 1947). Although Hari Singh's sentiments/choices stood in the way of his opting accession with Pakistan but now it was Nehru's nominee, Sheikh in the way of Hari Singh signing accession with India. Even Mahatma Gandhi visited Jammu and Kashmir and impressed upon Maharaja Hari Singh for conceding the "demand of people" for a constitutional government (actually it was for handing over local administration solely to Sheikh Abdullah as Prime Minister). Whereas for the general policy of Congress Party for acceding States, it was to be a local popular working government duly elected with a Chief Minister working with the Prime Minister or Dewan appointing by acceding Prince, who would hold a superior position till any other settlement was made after the Government of Independent Dominion took over.* Indian Independence Act had been passed by the British Parliament on 17th June, 1947. Independent new Dominion of Pakistan was to be born on 14th August, 1947 and India had to become independent Dominion on 15th August midnight. Maharaja did not agree for conceding to Quit Kashmir theory of Abdullah in favour of the National Conference which Sheikh was asking similar to Quit India theory in favour of Congress when Britishers would leave.

Had the Government of India promoted a name other than Sheikh Mohammed Abdullah, may be Hari Singh would not have waited so long for accession after 17th August, 1947. *This inference drawn by me is supported with fact that in November/December 1947, Nehru had first agreed that Hari Singh should notify for the formation of interim Government in Jammu and Kashmir on a model similar to Mysore model but later on backed out from that. This only manured the so far feeble plans of Sheikh Mohammed Abdullah for drifting Kashmir away from the Indian Dominion.*

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14

Historical Ties of Jammu and Kashmir

The Jammu and Kashmir State was one of the five Princely states of the British Indian Empire that were directly handled by the Governor General of India/Viceroy of India. British had acknowledged a 21-Gun Fire Salute status for Maharaja of Jammu and Kashmir (Hari Singh Bahadur) as it was for the Prince of Mysore, Baroda, Gwalior and Hyderabad. Historically, Kashmir had been for times immemorial identified with Bharat (India). The territories of India too have deep historical landmarks although there have been a variety of governing compositions of the local governance. The cultural traditions, practices and the socioreligious identities and the oneness from Himalayas to Kanya Kumari (even through to Sri Lanka and islands around) cannot be overlooked, though many may try to work out new tailored or temporarily alien identities for India. It is a hard, painful, regretful and most agonizing fact of modern history of India that some people fell into the trap of the British rulers and a separate new country Pakistan was carved out of India. The new Dominion Pakistan was made on the demand of some Muslim leaders from the same India where the Muslim and Hindu unitedly rose against the East India Company in 1857 and carried through steadily till 1942 against the British Crown. Even after 15th August, 1947, many muslims preferred to stay back in India and did not move to the "Islamic Republic" of Pakistan (Dominion of Pakistan) that took birth in 1947, demonstrating the failure of two-nation theory. Both Hindus and Muslims have paid the price for the misadventure by some of their own people. Lakhs of people died and huge number suffered loss of honour/wealth. There are many in India and Pakistan who even curse today those who pushed the culturally and traditionally monolithic Indian people into the dilemma of 1947 partition of India. People of Pakistan have not still been able to address their identity without referring to India and further broke into two parts in 1971. The foundations raised only on religious considerations have collapsed just in two decades. The masses in Pakistan and Bangladesh are the worst sufferers of the misadventure of the Muslim League.

The people of India too have been feeling the heat all these years since the disturbed Pakistani governments so far kept on diverting the attentions of their people from the local misgovernance in the name of enmity with Hindu" India. On the contrary, the fact of the matter is that India has nearly as large muslim population as Pakistan has. But the worst sufferers have been the people of the Jammu and Kashmir State.

Immediately after 1947, most of the people of Jammu and Kashmir considered the accession of J&K with India as truthful and final. A small number would surely have been there, who had an inclination towards Pakistan in terms of the two-nation theory. But I am pained to write that any separatist ideology that is seen in 2013 in Jammu and Kashmir and, Kashmir Valley in particular, is more due to wrong and insincere handling of the J&K affairs at the level of Delhi. The misfortune of the people of J&K started right after 1946. Since the Kashmir affairs were particularly handled by Jawahar Lal Nehru before accession and after accession, I would opine that all what we see today is due to the wrong handling by Jawahar Lal Nehru's Government and thereafter also mostly by the Governments where Congress held the reins at New Delhi and even in J&K including the period after 2002. I should not be misunderstood as a votary against Congress whose leadership did many goods for the Indian people except the manner in which its leadership handled the Jammu and Kashmir affairs. Mishandlings passed from one hand to another, even non-Congress Governments at New Delhi too could not work for effective corrections and believed more in temporary and cosmetic corrections. So, the separatists and anti-accession propaganda and campaigns have succeeded in bringing a section of people near to their belief. The most effective tools used have been (i) 1947: Accession of Kashmir with Indian Dominion was not truthful; (ii) 1947: Accession of Kashmir with Indian Dominion was conditional; (iii) 1947: Accession of Kashmir with Indian Dominion was not complete. And, no doubt, whereeever possible, they could use also (outside the scope of the principles laid down for accession) a parameter that it was a Muslim majority Princely State which was outside the scope of the Principles laid down for the Accession. The people of Jammu and Kashmir have remained in confusions and elusions since the last 6 decades.

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The Failure of Government

Hari Singh acceded to the Indian Dominion on 26th October, 1947 under a legitimate instrument of accession. Lord Mountbatten, the then Governor General of India, had addressed a letter to Hari Singh that is being primarily used by some separatist elements (and in recent times by some political competitors or to compete politically) and they to call the acceptance of Accession as conditional after the Prince of Jammu and Kashmir transferred the power to the people. Hence, J&K continuously remained disturbed politically. Most of the political leaders worked for J&K for personal political gains or extending favours to his friends and kins. Some of the Kashmir-centric mainstream leaders in J&K have even suggested joint control of India and Pakistan over J&K and, unfortunately, New Delhi has been treating them as the mainstream leaders. The quotes made in the media have not been denied by such leaders. This is a clear reflection of the state of affairs which brought in Jammu and Kashmir in the present vulnerable condition. Such acts can otherwise be seen as attempts to negate the October 1947 accession of J&K with Dominion of India. Problem of interregional divides too are emerging in J&K and there is utmost need to rectify the local doubts and grievances. Need has been arisen for early settlements and cooling down of the tempers of even those who have never talked against the Indian nationality but have surely complained of a local region-based neglect. Such issues may cause stresses and strains more than what the terrorism has caused. Terrorism that had hit the

Kashmir Valley in late eighties of the 20th Century has nearly engulfed the whole of J&K. Material loss suffered by the people of J&K is surely too little in comparison to the social and communal divides that have started appearing on the agenda of some leaders.

Demands for regional councils have been extended to the demand for reorganisation of J&K State into the State of Jammu extending over the erstwhile Jammu Province of 1947 Princely State of J&K, State of Kashmir extending over the area of Kashmir province of 1947 Princely State of J&K and part three as the Union Territory comprising of Ladakh district of 1947 Princely State of J&K. Is the demand for reorganisation of J&K fair and administratively practical? This is important to know with reference to the erstwhile States of Punjab, Uttar Pradesh, Bihar and Madhya Pradesh with due consideration to the Constitutional provisions. Where our prime national interests demand, the Parliament, if felt necessary, may have to go for amending some chapters of the Constitution as well. No doubt, the technical or constitutional arguments for and against could be extended by either side. But the Constitution is made by the people of India and it could be redrafted and duly amended by the same people. But as regards to J&K, the condition has become worse. Earlier demands from the Kashmir Valley-based leaders of Separatist tendencies were mostly for redrafting center-state relations but presently the demands are shifted to the questions on validity of Accession 1947. These questions are boldly raised by some groups in the Kashmir Valley, who have gone unchecked and unanswered. They are now making their humble strides to other parts of the State as well. This is the most worrying issue for India. So, as on date, the question is more for ideologically win over the separatist elements and the challenges they throw than contesting and discussing Article 370 of the Indian Constitution, demands for restoration of Autonomy to State as made by the National Conference or Autonomy Resolution of J&K Assembly. Of course, all these years, Farooq Abdullah (son of Lt. Sheikh Mohammed Abdullah) has so far firmly held to the irrevocable doctrine of 1947 Accession of J&K with the Indian Dominion and his suggestions too could be taken for addressing the problem.

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16

Princely State of J&K Acceded to the Indian Dominion

Before going into details, it will be worthwhile to mention here that even Pakistan has outrightly claimed that no instrument of accession was signed by Maharaja Hari Singh on 26th October, 1947 in favour of India.

Immediately after 1857 India Uprising, the Government of India Act, 1858 was passed on 2nd August by Parliament of UK, which liquidated the British East India Company and functions were transferred to the British Crown to give a better government to India, for governing India constituted of British India and Indian Princely States that the British Crown sensed that in case they have to stay long in India then:

(i) the Indians shall have to be divided on the basis of religion, local faiths, traditions, material interests and regions.

(ii) the Indian Princes shall have to be distanced from their people.

(iii) the Indian Princes shall have to be assured of their personal social and economic security and, in return, the British may be able to have some check on the growing anti-British mass movements in times ahead.

But the pressures on the British did not subside. The Government of India Act, 1909 (The Indian Councils Act of 1909), the Government of India Act, 1919, which envisaged the involvement of Natives/Princely States in the Government of

India through the Council of States and the Government of India Act, 1935 were the result of unending pressures from the people of British India and the Indian Princely States for independence.

Indian people accepted the partition of British India on the basis of two-nation theory to avoid further delay in the retreat of the British. Those who would like to know more about the British intentions could well go through the exercises done by the British crown from 1905 till the visit of British Cabinet mission in 1946. The British had tried continuously to divide the Indians into Hindus and Muslims. An unsuccessful attempt was made to divide Bengal purely on communal lines by Lord Curzon in 1905. The British had been shaken in 1857 when the Hindu and Muslim rose against the East India Company as Bharatvasis. Introduction of sect-based separate electorates in 1909 were taken, which were the calculated moves of British for weakening the strength of Indian Independence Movement. But the Hindu-Muslim ties could not be easily dismantled. Still the subsequent formation of the Muslim League in British India was in a way success for the British. And, finally, the Indian Independence Act, 1947 of the British Parliament was in a way approval of 3rd June, 1947 plan of Lord Mountbatten for partition of British India. Lord Mountbatten was sent to India as the Governor General particularly to carry the process of Partition of India and Independence of India with amicable British retreat.

The British Crown purposely did not transfer the British Paramountcy over the Indian Princely States of the Indian British Empire in favour of the Indian Dominion. There was no logic in not doing so. In the whole process, Pakistan was born as a new State or Country with Dominion but by all logics, the India Dominion was not born as a new country but it was relieved of the British shackles. The prevailing circumstances forced the Indians to accept the British plans as their destiny, although most of the Princes of the Indian Princely States were in favour of associating with the Independent Indian Dominion.

The future constitution of independent India as well as Pakistan was yet to be drawn out. The Princes of the States surely had worries about their personal and socioeconomic security and may be some princes still reared some lust for power in Independent India or Pakistan. Under the circumstances and the territorial needs that existed, less than 3 to 4% of the Princely States, the British India could hope or afford for staying outside India or join the Dominion of Pakistan. The priorities which were looked for were safeguards for their personal properties and social status since they well knew that they will not be able to deny democratic rights to their people after India becomes a Democratic Republic.

Neither India could immediately define the future status of the acceded princes before the Indian Constitution was written. So, India got independence under the circumstances where many irritating ulcers out of British designs and some misguided Indian leaders were still to be simultaneously operated upon. The boundaries of Dominion of Pakistan were also yet to be finally drawn, particularly in erstwhile Punjab.

Partition was accepted by Indians as per the Indian Independence Act, 1947 of the British Parliament. Similarly, it has to be accepted that it was only the Prince of the Princely State of the Indian British Empire outside the British India, who had to decide whether to accede to India Dominion or Pakistan Dominion. British had advised the Princes to go with either dominion in their own interest. So, it was not the people but the Prince, who had to decide about accession with either Dominion. Here Maharaja of Jammu and Kashmir acceded with India on 26th October, 1947 unconditionally surrendering the sovereign authority for all the matters. But regarding which the British Paramountcy had surely lapsed from all practical aspects.

The text of Instrument of Accession executed by Maharaja Hari Singh was the same as was signed by other rulers of the princely States. Similarly, the acceptance of the Instrument of Accession by the Governor General was also identical in respect of all such instruments. He was to write, "I do hereby accept the Instrument of Accession." *It could not be conditional as a mere acceptance by the Governor General was complete and final.*

A close look at the Instrument Accession that Maharaja Hari Singh of Jammu & Kashmir signed on 26th October, 1947 and as was accepted by the Governor General of India, Lord Mountbatten of Burma, on behalf of the Government of Indian Dominion on 27th October, 1947, would reveal that the very vital questions still remained unanswered till today. This is with respect to the manner in which the Government of India disposed of the Instrument of accession as was sent by Maharaja Hari Singh through Mr. V.P. Menon (a Secretary in States Ministry, Government of India). Various questions should agitate the reasoning minds for a better understanding about the accession. This will help out to emerge with a widely acceptable thought that would settle the confusions as created over the years in the innocent minds of subjects of Jammu & Kashmir in general and those from the Kashmir Valley in particular.

I would refer to some specific portions of the Instrument of Accession of J&K with India that was signed by Maharaja Hari Singh of Jammu & Kashmir on 26th October, 1947. I quote contents of the Instrument of Accession, where it says that:

> *"Whereas the Indian Independence Act, 1947 provides that as from the fifteenth day of August, 1947, there shall be set up an Independent Dominion known as India, and that the Government of India Act of 1935, shall, with such omissions, additions, adaptations and modifications as the Governor General may by order specify, be applicable to the Dominion of India. And whereas the Government of India Act, 1935, as so adapted by the Governor General, provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof:*

Now therefore, I, Shriman Indar Mahendar Rajrajeshwar Maharajadhiraj Shri Hari Singhji, Jammu and Kashmir, Naresh Tatha Tibbet adi Deshadhipati, Ruler of Jammu & Kashmir State, in the exercise of my sovereignty in and over my said State, do hereby execute this my Instrument of Accession and ……"

3. I accept the matters specified in the schedule thereto as the matters with respect to which the Dominion Legislature can make laws for this State.

5. *The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947, unless such amendment is accepted by me, an Instrument supplementary to this Instrument.*

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors need to be observed for the purpose… And Lord Mountbatten of Burma, the then Governor General of India signed the acceptance on 27th October, 1947 as……

"I do hereby accept this Instrument of Accession dated this 27th day of October, nineteen hundred and forty seven."

And, hence, the exercise was complete. The *Instrument of Accession signed by Maharaja was covered with a speaking letter of circumstances & reasons. Mountbatten had also acknowledged the letter of Maharaja Hari Singh with a letter on 27th October but the contents of the Mountbatten's letter were conceptually not that speaking as were the Maharaja's. This will be discussed in the next chapter.*

Hari Singh's letter dated 26th October, 1947:

The Instrument of Accession signed by Maharaja was covered with a letter of circumstances and reasons and so was the acceptance of the Instrument of Accession. *Maharaja Hari Singh did try to explain the reasons in his letter dated 26th October, 1947 addressed to Mountbatten, Governor General of India (GGOI) for not signing the Instrument of Accession with either Dominion by 14th August, 1947.* No doubt Maharaja of J&K, as per the Indian Independence Act, 1947, read with the Government of India

Act, 1935 was the only authority to take a decision regarding a State of the British Empire that was outside the British India. He had the authority to make any observations on the circumstances as prevailed around him while taking a decision regarding accession to any of the dominion or otherwise relationships. Maharaja Hari Singh of J&K, in his forwarding letter of 26th October, 1947, had nowhere talked of any dispute regarding accession nor had he talked of any mass agitation by his people against accession with India or demanding accession with Pakistan or for independence. He had offered firm accession with the India Dominion without any condition. But Governor General, Lord Mountbatten, while acknowledging the letter of facts and circumstances addressed to him by Maharaja Hari Singh, named the accession of J&K as an issue of "dispute". Nor did Pakistan have any right to raise a dispute regarding accession on the Maharaja of J&K within the scope of Indian Independence Act, 1947. The accession was well deliberated and was done in a considerable manner by the only authority designated under the Indian Independence Act, 1947 as passed by the British Parliament and the Government of India Act, 1935 as adopted by the Governor General with respect of the Indian Dominion. The contents of the Indian Independence Act cannot be used selectively to anyone's choice. If anyone tries to undermine the right of the Prince/Maharaja of J&K, then similarly there could be some who may not accept the rewritten destiny of India in two-nation theory by the British Parliament and question even the existence of Pakistan. Maharaja in his letter said:

"I have to inform Your Excellency that a grave emergency has arisen in my State and request the immediate assistance of your Government. *As your Excellency is aware, the State of Jammu & Kashmir has not acceded to either of the Dominion of India or Pakistan. Geographically, my State is contiguous with both of them. Besides, my State has a common boundary with the Union of Soviet Socialist Republics and with China.* In their external relations, the Dominions of India and Pakistan cannot ignore this fact." *The Maharaja further said, "I wanted to take time to decide to which*

Dominion I should accede or whether it is not in the best interests of both the dominions and of the State to stand Independent, of course, with friendly and cordial relations with both. *The mass infiltration of tribesmen drawn from distant areas of North-West Frontier Province, coming regularly in motor trucks, using the Mansehra-Muzaffarabad Road and fully armed with up-to-date weapons, cannot possibly be done without the knowledge of the Provincial Government of North-West Frontier Province and the Government of Pakistan.* Inspite of repeated appeals made by my Government, no attempt has been made to check these raiders or to stop them from coming into my State. In fact, both radio and press of Pakistan have reported these occurrences. Pakistan radio even put the story that a provisional government has been set up in Kashmir"....Regarding his people, the Maharaja said, I quote: "The people of my State, both Muslims and non-Muslims, generally have taken no part at all......" *With the conditions obtaining at present in my State and the great emergency of the situation as it exists, I have no option but to ask for help from Indian Dominion....... Naturally, they cannot send the help asked for by me without my State acceding to the Dominion of India. I have accordingly decided to do so and I attach the Instrument of Accession for acceptance by your Government."* ..."I may inform your Excellency's Government that it is my intention to at once set up an interim government and ask Sheikh Abdullah to carry the responsibilities in this emergency with my Prime Minister."

Lord Mountbatten's letter to Maharaja on 27th October, 1947:

Lord Mountbatten also wrote a letter dated 27th October, 1947 to Hari Singh acknowledging the Instrument of Accession as signed by Hari Singh on 26th October, 1947. This letter surely has left some vital questions unanswered. Even Jawahar Lal Nehru's the then Cabinet could be questioned for the same; I would say even Vallabh Bhai Patel could be. The core of the letter is reproduced here for those who would like to join the discussion initiated by me.

Lord Mountbatten, in his letter of 27th October, 1947 acknowledgement addressed to Maharaja Hari Singh's letter of 26th

October said, I quote: "Your Highness´s letter dated 26th October, 1947 has been delivered to me by Mr. V.P. Menon. In the circumstances mentioned by Your Highness, my Government has decided to accept the accession of the Kashmir State to the Dominion of India. Inconsistent with their policy that in the case of any State where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that, as soon as the law and order have been restored in Kashmir and its soil cleared of the invaders, the question of State's accession should be settled by a reference to the people. Meanwhile, in response to Your Highness´s appeal for military aid, action has been taken today to send troops of the Indian Army to Kashmir, to help your own forces to defend your territory and to protect the lives, property and honour of your people. My Government and I note with satisfaction that Your Highness has decided to invite Sheikh Abdullah to form an interim Government to work with your Prime Minister."

Lord Mountbatten's letter surely has left some vital questions unanswered. Even Jawahar Lal Nehru´s the then Cabinet could be questioned for the same, since by then neither the Maharaja nor the Government of India had gone to the UN Security Council. India had made a complaint against Pakistan in Security Council on 1st January, 1948. And strangely on the onset itself, Lord Mountbatten, Governor General of India did not appear accepting the Instrument of Accession dated 26th October, 1947 as signed by Hari Singh in full. Lord Mountbatten, on behalf of his Government, separately laid down the condition of final settlement of the Accession by reference to the people even after signing the unconditional acceptance of Instrument of Accession on 27th October, 1947. He classified J&K State as a State where the issue of Accession was a dispute whereas it had been explained by Maharaja in his letter that there was no reference of any dispute or resistance from the people of his State. Maharaja of Jammu & Kashmir, who was the sole designated authority to assess the circumstances and requirements of his Princely State, had nowhere given any indication that there was an accountable objection to accession with India from his people, which was worth over the right for decision making·of the Prince of State. Maharaja Hari Singh Bahadur had said in very clear terms that the people of his State (J&K) were not by and large responsible for the disturbed conditions in the State in view of the aggression from across the borders along with the newly created Dominion of Pakistan.

Whereas the said letter of Mountbatten was technically not part of the Instrument of Accession, nor is there any document where the acceptance of conditional accession has been endorsed by Maharaja Hari Singh. So, the condition mentioned by Mountbatten was not valid. Whereas, unfortunately for the people of J&K and India, those in the power throughout all these years, have not at all tried to clarify the contents of the letter of Mountbatten so as to answer the questions raised by anti-accession elements. So, since the Government of India over the years has treated the affairs of J&K so casually, some anti-National elements have been able to carry their viewpoint to the innocent common man as well as the people outside the governing circles.

(a) Although the decision regarding accession was to be taken by the Maharaja of J&K and not by the people of J&K (but after analyses, the events in J&K, which could be reasonably traced from 1942 to 1947 August), it nowhere indicates that the people of this Muslim majority State of the British Indian Empire expressed opposite views for not acceding to India and instead expressed views for acceding to Pakistan. National Conference, Muslim Conference and Congress were the three main political parties in J&K. National Conference had larger base in the Kashmir Valley whereas Congress had larger base in the Jammu Province. The National Conference did not have much influence in the Ladakh region and Jammu province. But, under the influence of Jawahar Lal Nehru, the Congress kept low profile in the Jammu province, so the National Conference could claim some support in Jammu province also. After the formation of the National Conference (1939), the Muslim Conference had still small pocket supports in J&K. None of the political parties had raised any voice against India. The National Conference had launched Quit Kashmir call (Kashmir-centric) in 1946; it was not against "India" but was against the Maharaja of J&K. Under pressures from the Government of Jawahar Lal Nehru and undertakings or assurances from Sheikh Mohammed Abdullah, he and most of his colleagues were released from jails on 29th September, 1947 by Maharaja's Government. Sheikh Abdullah's letter dated 26th September, 1947 addressed to Maharaja Hari Singh, among other things, said:

"Inspite of what has happened in the past, I assure Your Highness that myself and my party have never harboured any sentiment of disloyalty towards Your Highness's person, throne or dynasty...I assure your highness the fullest and loyal support of myself and my organization..... Before I close this letter, I beg to assure Your Highness once again of my steadfast loyalty and pray that God may grant me opportunity enough to let this country attain under your Highness's aegis such an era of peace, prosperity and good government...."

So, although the public opinion did not matter as regards to the decision to be taken by the Prince for accession in terms of the provisions of the Indian Independence Act, 1947 and the Government of India Act, 1935 as adopted by the Governor General of India, still it could be said that the mass opinion including the people of the muslim majority Princely State of J&K were not against the accession with the Indian Dominion. *While addressing a mammoth public meeting at Hazuri Bagh, Srinagar on 1st October, 1947, Sheikh Mohammed Abdullah, the NC Chief, had made his opinion about the future of the State clear when he said, "Till the last drop of my blood, I will not believe in two-nation theory."*

In the period of immediate local governance after accession till the Constitution of independent India was drawn out, the various situations like the handling of the J&K affairs, the geographical conditions as prevailed on 14th August, the difference of opinion between the Maharaja and Jawahar Lal Nehru and the ambitions of Sheikh and many local leaders, who mattered, pushed J&K into more controversies and confusions. But, as long as anyone accepts the fortunes written through the Indian Independence Act, 1947, it cannot be contested that

Maharaja Hari Singh was the only authority designated to decide on accession, and he did so in favour of India.

(b) J&K acceded to India under the legitimate authority of Prince and that the Instrument of accession signed by Maharaja Hari Singh was based on the Common Draft cannot be brushed aside so simply.

Though the accession with India was done after 14th August, 1947 by Maharaja of J&K, but still it was within the provisions of Indian Independence Act, legitimate, well considered and willful. The Instrument of Accession as was signed by Maharaja Hari Singh was no different than the instrument of accession that was designed by Ministry of States with advice of Lord Mountbatten to be used by nearly 550 Princely States outside British India that were most likely to accede to Indian Dominion. The three subjects, mentioned to be governed by the Dominion government were the one that were earlier under the British Paramountcy since the future Constitutional relationships in Indian Democratic Republic were yet to be drafted, and in case the decision regarding accession were left for execution after Constitution of Dominion was drawn, it was feared that the process of independence with partition as well as British retreat would have been inordinately got prolonged. Even Lord Mountbatten on record held such opinion. Lord Mount Louis Mountbatten, Representative of the British Crown, in his address to a Special Full Meeting of the Chamber of Princes on 25th July, 1947, had said:

"It took two years to separate the province of Orissa from Bihar. Gentlemen, we decided that in less than two-and-a-half months, we shall have to go through the partitioning of one of the biggest countries in the world with 400 million inhabitants. There was a reason for the speed. I was quite certain that while the British over lordship remained, no satisfactory conclusion could be reached psychologically between parties. So, once we got the two governments set up and separated, they would be able to try and finish out the details in an atmosphere of goodwill. The first step was to set up some machinery by which it was possible to put the two future Governments of India -

the Dominion of India and Pakistan into direct touch with the States. So, I conceived the scheme of setting up two States' departments within the future Governments. But, when I say that they are at liberty to link up with either of the Dominions, may I point out that there are certain geographical compulsions which cannot be evaded? Out of something like 565 States, the vast majority are irretrievably linked geographically with the Dominion of India. The problem, therefore, is of the greater magnitude with the Dominion of India than it is with Pakistan. In case of Pakistan, the states though important are not so numerous, and Mr. Jinnah, the future Governor-General of Pakistan, is prepared to negotiate the case of each State separately and individually. But, in the case of India, where the overwhelming majority of States are involved, clearly separate negotiations with each State is out of question. The first step that I took was to suggest that in the Bill before Parliament... the Indian Independence Act... a clause should be put which would enable certain agreements to continue until renounced by either side. That was only done to ensure that there should be some continuity if, in short time available, it was not possible to get the agreement through which every State representative... it gives a small breathing time.... Now I say it is no exaggeration to say that most Rulers and Dewans were apprehensive as to what be when paramountcy lapsed. ...The draft Instrument of Accession, which I have caused to be circulated, as a basis for discussion (and for publication) to the representatives of the States, provided that the States accede to the appropriate Dominion on three subjects only without any financial liability..."

Many people have tried to mislead the common man or the outside world pleading that J&K had particularly acceded for only three plus subjects, which surely is a wrong presentation.

(c) Accession was done/was supported through a well speaking document: While sending the acceptance/offer of accession on 26th October, 1947 to the Government of India (Governor General of the Indian dominion), Maharaja Hari Singh did not make any change in the text of the common draft except that date of signing was changed from August to 26th October. The socio-political reasons for delay in accession have been touched by me (briefly) in the earlier chapters.

Maharaja Hari Singh also sent a letter along with the Instrument of Accession to the Government of India on 26th October, 1947. *Maharaja Hari Singh did try to explain the reasons in his letter dated 26th October, 1947, addressed to Lord Mountbatten, Governor General of India (GGOI) for not signing the Instrument of Accession with either Dominion by 14th August, 1947.* Maharaja explained some conditions and opinions for delayed accession. In his letter dated 26th October, Maharaja Hari Singh (i) nowhere said that his people were not allowing him to accede with India; (ii) he accused Pakistan for disturbing peace in his State; (iii) Pakistan had held back the supply routes and J&K had not by then acceded to India; (iv) he was short of men, materials, fuel, weapons to defend his territories and people and India was not supplying even utilities to J&K, as requested even on cost basis; (v) the people of His State were in general nowhere associated with the disturbed conditions in his State. *No doubt, Maharaja of J&K as per the Indian Independence Act, 1947 and Government of India Act, 1935 was the only authority to take a decision regarding a Princely State of the British Empire that was outside the British India and make any observations on the circumstances as prevailed around him while taking a decision regarding accession to any of the dominions or otherwise relationships.*

Similarly, some other parts of the letter dated 26th October, 1947 are produced here: Maharaja in his letter said:

"I have to inform your Excellency that a grave emergency has arisen in my State and request the immediate assistance of your Government. As your Excellency is aware, the State of Jammu & Kashmir has not acceded to either of the Dominions of India or Pakistan. Geographically, my State is contiguous with both of them. Besides, my State has a common boundary with the Union of Soviet Socialist Republics and with China. In their external relations, the Dominions of India and Pakistan cannot ignore this fact."

The Maharaja further said:

"I wanted to take time to decide to which Dominion I should accede or whether it is not in the best interests of both the dominions

and of State to stand Independent, of course with friendly and cordial relations with both.... The mass infiltration of tribesmen drawn from distant areas of North-West Frontier Province, coming regularly in motor trucks, using the Mansehra-Muzaffarabad Road and fully armed with up-to-date weapons, cannot possibly be done without the knowledge of the Provincial Government of North-West Frontier Province and the Government of Pakistan. Inspite of repeated appeals made by my Government, no attempt has been made to check these raiders or to stop them from coming into my State... Pakistan radio even put the story that a provisional government has been set up in Kashmir"... Regarding his people, the Maharaja said, "I quote: 'The people of my State, both Muslims and non-Muslims, general have taken no part at all... With the conditions obtaining at present in my State and the great emergency of the situation as it exists, I have no option but to ask for help from the Indian Dominion.... Naturally, they cannot send the help asked for by me without my State acceding to the Dominion of India. I have accordingly decided to do so and I attach the Instrument of Accession for acceptance by your Government." ..."I may inform your Excellency's Government that it is my intention to at once set up an interim government and ask Sheikh Abdullah to carry the responsibilities in this emergency with my Prime Minister." Surely there were some unwritten sociopolitical/communication reasons also for delay that the Maharaja might not have felt worth mentioning there since the personal equations then were not running that smooth.

(d) From technical angles, the accession of a Princely State had to be executed in reference to the Government of India Act, 1935 and Indian Independence Act, 1947. Mountbatten was also a close family associate of Pt. Jawahar Lal Nehru, the Prime Minister of India. Mountbatten could not on his own lay down such a condition. Maharaja Hari Singh, after a thoughtful consideration and apparently prolonged deliberations with his nears, dears, advisors and men of confidence, had taken decision to accede with the Dominion of India. The Government of India had no logical reason or any special/social authority or any provision of Law or any valid justification for not accepting the Accession or to accept it conditionally.

Those who advocate Negation of Instrument of Accession or ask for ascertaining the choice of people of Jammu & Kashmir under the supervision of some independent agency quote the condition laid down in the letter of Mountbatten (GGOI). They contest that the said letter had become part of Instrument of Accession. In this regard, it has to be also kept in mind that as per the terms and conditions laid down in the Instrument of Accession signed by Maharaja, any amendment to the terms of Instrument had to have the consent of the Maharaja. Therefore, even this demand could be dismissed since, for a conditional accession, the consent of the Maharaja Hari Singh was a must and since it was not obtained, the letter had no significance.

Hence, technically the Accession of J&K with the Indian Dominion has been surely there and those asking for right of self-determination in the context of political and national status of J&K have to first call for secession of J&K from Union of India and may be, hence, even ask for undoing the Indian Independence Act of the British Parliament as of 1947. Of course, the same Act had given the Princes of Princely states a sole right to decide on accession to either of the dominions, i.e., Independent Dominion of India and new dominion of Pakistan.

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17

Accession could be done even after 15th August, 1947

The British was to retreat from the Indian lands as stated in the Indian independence Act, 1947. The Indians had yet to decide for further set up (say Constitution) for managing the affairs on their own. So, for speeding up the process, a common text of Instrument of Accession was designed by Lord Mountbatten for more than 550 Princely States likely to accede to the Indian Dominion. No such instrument was drafted by Mountbatten for States that could accede to Pakistan since the number of such states (as was then anticipated) would have been just around 15. Maharaja Hari Singh of J&K did not sign the Instrument of Accession before 15th August, 1947. The reason more propagated, so far, for the delay has been that he was considering the option of his State remaining independent of India or Pakistan. No doubt, remaining independent was also an option with Maharaja Hari Singh but surely it was not in his immediate focus before 15th August, 1947. Mohammed Ali Jinnah did not see any justice for the Muslims in India after the British retreat. So, on the basis of two-nation theory, a new country in the name of Pakistan was to be carved out of India. On 3rd June, 1947, Louis Mountbatten, first Earl Mountbatten of Burma and the then Viceroy of India, announced carving out of an area out of British India of the British Indian Empire for Pakistan, a theocratic Islamic State. As per the plan prepared by him, Indian Independence Act was passed by the British

Parliament and it received Royal Assent on 18th July, 1947. So, the only option left for the Indian people was to accept the fortunes as were written in the India Independence Act, 1947 of the British Parliament. Some of the territories of India of the British Empire were also under the executive rule of local Princes and their Defence, Foreign Affairs, Communications and like subjects were under the control of the British Crown. Indian Independence Act did not transfer the Paramount Power to India or to new Dominion of Pakistan. So, Princes could do the exercise of examining different models of Governance after British Retreat. Staying independent of India or Pakistan could also be one of such models/options. But still it was not possible for a large majority of them to stay independent of the Indian or Pakistani dominion. There was no condition laid down in the Indian Independence Act directing that a princely State could accede to Indian or Pakistani Dominion only by or before 14th August, 1947. Only advisories had been issued to Princes for taking such decision before 14th August to have a peaceful transition. It was an unpleasant fact that the Muslim League had got the partition of British India done on the basis of religion. Pakistan was to come up as an Islamic state. So, it was anticipated that there would be very large movement of Hindus and Muslims across the new boundaries. Since Pakistan was to be a theocratic state, more movement of Hindus from the Pakistani areas was expected. Communal clashes on religious lines were feared. Therefore, it was suggested that decisions by Princely States (that were within the British Indian Empire but outside British India) are taken before 14th August, 1947 itself so that the likely movements on the basis of religious faith take place before the on-ground geographical partition of British India and are not spontaneous.

Hari Singh did mention geographical aspect as one of the reasons for delay in his letter dated 26th October to Lord Mountbatten. But this was not the only reason. There were also some other unwritten sociopolitical reasons for not acceding to India by 15th August, 1947. May be Maharaja did not find it appropriate to write pointedly such reasons since the personal equations then were not running that smooth for him. Some feelers surely emerge indirectly from his letter.

1. The Quit Kashmir call was given against the Dogra Raj by Sheikh Abdullah in May 1946. The way the Quit Kashmir call was promoted and projected, it surely cultivated bitterness in the mind of Hari Singh. And to add to this, the Senior Congress leaders, in a way suggested Maharaja Hari Singh to appoint Sheikh Mohammed Abdullah (NC leader) as the Prime Minister of J&K immediately on acceding to the India Dominion. Hari Singh was after all Maharaja of a Princely State of the British Indian Empire who could take such attitude of Congress leadership as an irritant. This could also delay his decision regarding accession. Such like indications do emerge from the contents of the letter dated 26th October, 1947. The letter says:

"I may Inform your Excellency´s Government that it is my intention to at once set up an interim government and ask Sheikh Abdullah to carry the responsibilities in this emergency with my Prime Minister."

2. The final boundaries of Pakistan were not settled till 15th August. As per the Indian Independence Act of July 1947, Section-4 Schedule: II the districts provisionally included in THE NEW PROVINCE OF WEST PUNJAB (West Pakistan) were:

(i) from the Lahore Division: the districts of Gujranwala, Gurdaspur, Lahore, Sheikhupura and Sialkot;
(ii) from Rawalpindi Division: the districts of Attock, Gujrat, Jhelum, Mianwali, Rawalpindi, Shahpur; and
(iii) from the Multan Division: the districts of Dera Ghazi Khan, Jhang, Lyalipur, Montgomery, Multan and Muzaffargarh.

A provisional borderline for Pakistan had been drawn up by Lord Wavell, Viceroy of India prior to his replacement with Mountbatten in February 1947. As per this provisional draft on borders of the upcoming Pakistan Princely state of Hari Singh had no immediate working geographical land communication link with Indian Punjab.

In order to determine final boundaries of Pakistan, in June 1947, the British Government appointed Sir Cyril Radcliffe as the Chairman for the Boundary Commission for Bengal and

Boundary Commission for Punjab. The Commission was advised to demarcate the boundaries out of British India (excluding Princely States) on the basis of contiguous majority Muslim areas and non-Muslim areas. Ofcourse, there were some other undefined factors that could be kept in view like "natural boundaries, communications, watercourses, irrigation systems, as well as socio-political consideration. Each commission had two representatives each from the Indian National Congress and the Muslim League. Radcliffe reached India in the second week of July 1947.

Radcliffe was prevailed upon by Mountbatten to accept the deadline for finishing the task by 15th August. The Radcliffe Award kept most parts of Gurdaspur District, except for the sub-division of Shakargarh, out of West Pakistan. But this was announced after 15th August, 1947. It was only after this announcement that a direct regular link with the Indian dominion was available to J&K. No doubt, the Radcliffe completed the job before 15th August, 1947. But it would remain a question why the Radcliffe Line was made public after 16th August. There was no condition for acceding to India only before 15 August, 1947. But still it was not done immediately after 16 August by Hari Singh since the environments and priorities had not remained as they were before 14th August, 1947.

3. And, of course, the irritation that the J&K Prince had about the attitude of the Delhi leaders that could possibly encourage some of his advisors, well wishers and the Muslim Conference leaders (who were against Sheikh Abdullah) to suggest him that he could better stay Independent. So, considering that Maharaja Hari Singh did mention in his letter of 26th October addressed to Lord Mountbatten, it was surely a reaction to the circumstances that emerged out of the approach of Delhi leaders adopted for J&K, particularly after May 1946.

So, delayed accession cannot so simply be attributed to the reasons of an option for remaining independent.

Therefore, even if the Accession was done by Hari Singh after 14th/15th August, 1947, it was fair and legal in terms of Indian Independence Act, 1947 of the British Parliament. It was only for ensuring a peaceful transition that Indians had, though regretfully, accepted the fortunes as were written in the Indian Independence Act, 1947 of the British Parliament. So, in case anyone ventures to look into the socio-communal technicalities (of accession and right of the Prince of a Princely State) outside the terms of Indian Independence Act, then other side could even venture into not accepting the creation of the State of Pakistan.

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18

It is a Point Here

Maharaja, in his letter of 26th October, 1947, had said, the people of my State, both Muslims and non-Muslims, generally have taken no part at all in the attacks on Jammu and Kashmir abetted and assisted by the Pakistani forces. It is worth noting here that the letter from Mountbatten was dated 27th October, 1947 and by then neither the Maharaja nor the Government of India had gone to the UN Security Council. India had made a complaint against Pakistan in the Security Council on 1st January, 1948. And strangely on the onset itself (27th October, 1947), Lord Mountbatten, Governor General of India signified the acceptance of the Instrument of Accession dated 26th October, 1947 as signed by Hari Singh while trying to make some confusions in the letter. Lord Mountbatten, on behalf of his Government, laid down the condition of final settlement of the Accession by reference to the people. In the circumstances, as explained by Maharaja in his letter, there was no reference of any dispute or resistance from the people of his State, whereas Mountbatten had written to Maharaja that:

"In the circumstances mentioned by your Highness, my Government have decided to accept the accession of the Kashmir State to the Dominion of India. Inconsistent with their policy that in the case of any State, where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that, as soon as the law and order have been restored in Kashmir and its soil cleared of the invader, the question of State's accession should be settled

by a reference to the people."

Whereas the Maharaja of Jammu & Kashmir, who was the sole designated authority to assess the circumstances and requirements of his Princely State, after the lapse of British Paramountcy, had nowhere given any indication that there was an accountable objection to accession with India from his people as could override Prince's right for decision-making as a Prince of State. *The Maharaja had nowhere talked of any dispute regarding accession of J&K and involvement of people of Jammu and Kashmir State in the turmoil and emergency that prevailed in Jammu and Kashmir in October, 1947. Whereas in the Kashmir Valley, in particular, persons like Mohammed Maqbool Sherwani were tortured to death by invaders for offering resistance to their plans.* Mohammed Maqbool Sherwani was a 19-year civilian, who sacrificed his life in October 1947. In 1950s, his tale was included in school textbooks but not now in 2013. He is an unsung hero of Jammu and Kashmir. In 2013, very few people outside Baramulla may know about the role he played in saving Srinagar from the Pakistani raiders, who attacked Kashmir. Acknowledging Sherwani's contribution, no doubt, the Army's 19 Division has set up a community hall in Baramulla in his memory at a cost of almost Rs. 1 crore.

Sherwani, just in his teens, single-handedly thwarted the advance of thousands of raiders (Kabailis) from Baramulla, thereby giving some lead time to the Indian Army to land in Srinagar. He went around on his bike telling the Kabailis, who stormed Baramulla on 22nd October, 1947, not to advance towards Srinagar as the Indian Army had reached the outskirts of Baramulla. His bluff worked. The enemy froze in its tracks for four days. By then, the first Sikh had landed in Srinagar on 27th October (now celebrated as Infantry Day).

Later the tribals/kabailies crucified Maqbool and shot him dead. One person named Ali Mohammed Bhat recollected after 60 years that the Kabailis couldn't digest the fact that a young boy had fooled them. He had seen a Kabaili on a motorcycle with an almost dead Sherwani slung across the petrol tank, who was later put on a wooden cross, nailed and fired upon 10-15 times. "Sherwani" remained like that for two to three days and his body was brought down when the Army reached there. The army had got time to prepare for the historic battle of Shalateng, near Srinagar where over 700 raiders were killed. It appeared in the media with the reference of Col. Harwant Singh (Retd.) who fought at Shalateng that Sherwani's contribution changed the complexion of the 1947 operation tide in India's favour. Another person named Francis Rath, an octogenarian doctor, from Baramulla, had said, "I was on my way to Srinagar after the fighting was over. Vultures and dogs were feeding on the bodies of the Kabailis. Shalateng turned into a graveyard because of Sherwani. The sacrifice of Master Abdul Aziz too was exemplary. The invaders raped the nuns and wanted other non-Muslim women to be handed over to them. Master Abdul Aziz, a tailor by profession, held the holy Quran in his hand and said that they can touch the women only after they pass over his dead body and the holy Quran. The brutal killers did not spare him either.

Here the question arises that why the issue of accession had to be settled by people's reference and what was the basis to call the issue of accession a dispute by the Government of India/Mountbatten? In the letter dated 26th October, 1947, Maharaja Hari Singh Bahadur had clearly informed that the people of his State (J&K), both Muslims and non-Muslims, were, by and large, not involved in the disturbed conditions prevailing in the State, including the aggression from across the borders alongwith the newly created Dominion of Pakistan.

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19

Separatists Quote and Use

Those who advocate Negation of Instrument of Accession or ask for ascertaining the choice of People of Jammu & Kashmir under the supervision of some independent agency also quote that this condition was laid down in the letter of Mountbatten (GGOI). They argue that the said letter had become part of Instrument of Accession. *In this regard, it has also to be kept in mind that as per the terms and conditions laid down in the Instrument of Accession signed by Maharaja, any amendment to the terms of Instrument had to have the consent of the Maharaja.* Therefore, even this demand could be argued that for a conditional accession, the consent of the Maharaja Hari Singh was a must and since it was not obtained, the letter has no significance. Maharaja had not made any conditional accession. Hence, technically the accession of J&K with the Indian Dominion has surely been there. *Those asking for right of self-determination in the context of political and national status of J&K have to first call for secession of J&K from the Union of India and may be even undoing the Indian Independence Act of the British Parliament as of 1947.*

Of course, the same Act had given the Princes of Princely States a sole right to decide on accession to either of the dominions, i.e., Independent Dominion of India and new dominion of Pakistan. But, unfortunately, since the affairs have not been properly handled by New Delhi, the separatists and others have been able to seek the assistance of the letter of Mountbatten for carrying their message to outside world. *Any contest has to be on technical grounds* *but the secessionists have been able to sow seeds of distrust against the 1947 Accession of J&K with India even without having any technical or legal reasons for nullifying Accession, which is a hard reality.*

The letter of 27th October, 1947 of Nehru's friend Mountbatten is the greatest tool with secessionist to spread message and gather support from the world. The letter made the accession look temporary which was propped up by some speeches of Nehru asserting fulfilment of promise made with reference to people on the issue of accession.

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20

Earlier the people of J&K took Pakistan as an Aggressor

New Delhi has done very little to minimise influence of campaigns of the anti-accession elements. Rather a good number of people of other Indian states too do not conceptually hold firmly to the trueness of the accession. It is due to ignorance that they have been thinking that J&K accession is a dispute between India and Pakistan as in the earlier years, most of the people of J&K took Pakistan as an aggressor country. As on date, the people of Jammu and Kashmir (particularly the Kashmir Valley) cultivated misconceptions regarding India and the trueness of Accession.

Of course, most of the confusions about the 1947 accession of J&K with India have been created by the manner in which the accession was accepted by the Government of India on 27th October, 1947 and the manner in which Jawahar Lal Nehru treated the affairs of J&K, much different than other Indian princely states.

Mishandling and ill treatment of J&K affairs has affected the people of J&K immensely and left them in a vulnerable situation. After 2002, the Kashmir valley has been made to bleed emotionally. Physical bleeding could be handled easily but the emotional and ideological bleeding and injuries are not that easy to handle and fatal. "Indians go back" slogans and banners are a common sight in the Kashmir Valley but the government at New Delhi does not pay a heed to it and instead give the reasons of unemployment and economic needs existing in the valley for this atmosphere. These parameters of employment and economic growth help the separatists to cultivate voice against India. But when the whole scenario is considered alongwith the indifferent attitude of the government the approach of giving economic parameters a priority is surely an unwise thinking.

Whereas the letter dated 27th October, 1947 from the Governor General of India, Lord Mountbatten to Maharaja Hari Singh has also over the years provided working grounds to separatist organizations like Jammu & Kashmir Liberation Front and others who have pleaded against the Accession of Princely State of J&K with India in 1947. The said letter has been used by anti-Indian elements to term the accession as conditional and temporary. Rather some say that the Government of India had not totally accepted the Accession. But if so, did the People of India question the New Delhi government in the past about the conditional acceptance? *It is a tool that the separatists and anti-India forces have been using very convincingly over the years. It has to be answered by the GOI/Congress leadership in simple common man's language about their indifference and the reasons of not taking a concrete step on the issue of accession. The facts need to reach out to more number of people.*

The situations only helped in growing the ideological pollution. The people suffering from ill information and concepts have not been given the right directions. Attention has been given to people who spread ill wills and disharmony while the real victims are ignored by the rulers of the Country and State. □

21

Exile of Families

Even after two decades, the opinion makers do not know about the State of Jammu and Kashmir in its true perspective. Due to such misguided approach in the past, even some media houses/personalities are influenced by the explanations and information that the separatists have been promoting over the years. The result has been that those people who considered J&K as a truly acceded State with India are under the pressure of the separatists who freely advocate against J&K being an Indian state. The state of affairs could be seen from the fact that nearly big number of families (Hindu and some non-State Subject Hindus/Muslims also) have migrated from the Kashmir Valley and even after 25 years Government of India has not taken any concrete steps to rehabilitate them or restore their original homes. It is surprising that no one appears to have questioned that forcefully. This surely has sent doubts to the international community about J&K being an integral part of India.

This issue needs immediate attention and honest handling, otherwise it is feared that very soon the religion-based divisive ideologies may inflict the Jammu and Ladakh regions, which has larger area than the Kashmir Valley. The Jammu region has nearly double the area of the Kashmir Valley and the Ladakh region has five times larger areas than the Kashmir Valley.

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22

Mountbatten was a Close Family Associate of Nehru

Anyhow from technical angles, the accession of a Princely *State had to be executed in reference to the Government of India Act, 1935 and the Indian Independence Act, 1947. But the wisdom of Lord Mountbatten, the then Governor General of India, had adjudged the issue of Accession of J&K as a Dispute. Mountbatten was also a close family associate of Pt. Jawahar Lal Nehru, the Prime Minister of India.* Mountbatten could not on his own lay down such a condition. Maharaja Hari Singh, after a thoughtful consideration and apparently prolonged deliberations with his men of confidence, had taken a decision to accede with Dominion of India. *Whereas the government of India had no logical reason or any special/social authority or any provision of Law or any valid justification for not accepting the Accession or to accept it conditionally.*

Then whose choice or will had prevailed? Even if it is assumed that the Government of India (after Independence) still wanted to act as per her own wishes in spite of there being no provision/directions like this in the Indian Independence Act, 1947, why did the Government of India wish like this and made the acceptance of the Accession to look like a conditional one? Sardar Vallabh Bhai Patel, then the Deputy Prime Minister, was against it. The people close to Nehru could be questioned even now. *Mountbatten could surely not lay down this condition on his own. Although such a question may be disposed by some as saying that what the Governor General wrote in his letter of 27th October,* *1947 was not the part of instrument accession and moreover there is no written acceptance of alleged conditional acceptance from the Prince signing the instrument of accession in terms of the condition/clauses 4 and 5 in particular of the Instrument of Accession. It could also be said that no such modification had been made to the provisions of the Government of India Act, 1935 by the Governor General in terms of the provision of the Indian Independence Act, 1947 till 15th August, 1947 (or even upto 26th October, 1947). But now since much time has been lost, the questions and demands cannot be so simply disposed off on the basis of technicalities. The facts, though late, shall have to be taken to the common people to undo the conceptual deformation done by the anti-India/anti-accession elements.*

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23

A Brief on Political Activism and Jammu & Kashmir

I would beg to make here some reference to the conditions as prevailed in J&K as well as in the British India after 1930. The need is felt by me to paint some picture about the local politics in J&K. It is important to highlight the circumstances and the environment that might have been influencing the decision making by the then Ruler of J&K, Maharaja Hari Singh regarding the accession to India or Pakistan or to stay neutral before 15th August, 1947 or even thereafter. The partition of Bengal (British India) in 1905 and the performance of Agha Khan deputation in 1906 and subsequent formation of the Muslim League in the British India and introduction of separate electorates for the muslims in 1909 were the calculated steps of British in dividing the movement for Indian independence. Since J&K was a muslim majority state under Hindu Maharaja, who was proving to be inconveniently independent and patriotic (proindependence of India), the British decided to make the conditions difficult for Maharaja Hari Singh. Direct and indirect methods of confrontations were conceived. In 1924, the architecture of the memorandum was developed to present before Viceroy Lord Reading during his visit to the Kashmir Valley. The memorandum focused on demanding rights to peasants, services for more muslims, better facilities for education, against beggar, etc. In September 1925, Maharaja Hari Singh rose to the throne. Then followed another slogan "Kashmir for Kashmiries" under the leadership of Shankar Lal Koul. The slogan demanded provisions, laws and policies like placement of educated sons of soil in government service, ban on sale of land to outsiders, freedom of press, freedom of association and elected legislature to voice the views on affairs of the State; and the result was State Subject Law of 1927.

Sheikh Mohammed Abdullah was a wise, active and concerned local muslim youth with postgraduate degree, who got appointment as a teacher. He joined a local "reading room group"/a local youth club in Srinagar that later formed All J&K Muslim Conference (1930). Some local Muslims of the muslim-dominated Srinagar and some from Mirpur and Poonch provided the starting point. The J&K Muslim Conference began as a religio-political movement of the Muslims. Its activities were later aimed particularly against the Hindu Maharaja Hari Singh. Some Mullahs also joined the anti-Maharaja and anti-Hindu propaganda. The Muslim masses of the Kashmir Valley, in general, were innocent and large majority of them were not educated. They were firm believers of their religion; so they could be easily carried by coreligious fellowmen/local leaders, who had influence on their local life activities. Hence, mainly the Kashmir Valley and some parts of the Jammu province allegedly saw anti-Dogra Raj/Hindu Muslim tension in June 1931. On 13th July, 1931, demonstration against the Government and Maharaja was held outside Srinagar jail, where trial of a muslim agitator was going on and 21 persons died in police firing. An inquiry commission was appointed under the chairmanship of B.J. Glancy nominated by the Political Department, Government of India) with 4 members from J&K and Maharaja was almost forced to accept a number of British Officers. Glancy Commission report in 1934 had to be accepted in toto by Hari Singh to the extent that even undergraduate Muslim applicants were to be preferred to a graduate Hindu for recruitment in State services.

Sheikh Mohammed Abdullah had gained leads in the Muslim Conference, an organisation originating from a reading room party/social group for the welfare of the local Kashmiri muslims. *Sheikh had made up his mind some time in 1937 to seek the political support of Indian National Congress that had won 8 out of 11 British Indian Province elections (including Muslim-dominated NWFP) for his movement against the Dogra Raj.* Muslim League had secured only one of 90 seats in Punjab Legislature. So, for window dressing it was in 1938 that Sheikh Abdullah decided to open the doors of Muslim Conference for Hindus as well. He moved a resolution in the WC meeting of JK Muslim Conference on 28th June, 1938 at Sopore for making recommendations to the General council for making the change and the same was carried through, although his colleagues Bakshi Gulam Mohammad and G.M. Sadiq are said to have opposed it. It was on 11th June, 1939 that Muslim Conference was renamed as All J&K National Conference (NC). The party decided to work for the welfare and political rights of all the subjects of J&K irrespective of caste, creed and religion. A number of senior Muslim leaders from Kashmir Valley and some from the Jammu region were against the proposal of Sheikh Abdullah. Some Muslims of Jammu and Mirpur, Poonch and Muzaffarabad refused to follow Sheikh in 1939 and held back the banner of Muslim Conference predominantly in Jammu, Mirpur, Poonch and Muzaffarabad. NC did not find much acceptance in Jammu. The main leadership of Muslim Conference after 11th June, 1939 passed into the hands of the Punjabi speaking Muslims like Chaudhary Ghulam Abbas and Sardar Mohammad Ibrahim. It continued its work in Kashmir under the leadership of Maulvi Mohammad Yusuf, the priest of Srinagar. Maulvi's party was nicknamed as *bakra (goat) party* and Sheikh's party as *sher (lion) party. The present-day Awami Action Committee of Maulvi Farooq could be treated as a new version of Muslim Conference in Kashmir with the objective of the party was the welfare and upliftment of Muslims of Kashmir valley only.*

In 1940, Jawahar Lal Nehru and Khan Abdul Gaffar Khan visited Kashmir and encouraged the National Conference. At that time the Muslim League was the main emerging principal political party in British India along with the Indian National Congress. The Indian leaders were well received by the National

Conference cadres in Kashmir. Muslim League too had by that time obtained recognition and patting from the British. This was the turning point of political career of Sheikh Abdullah and his "Freedom movement". It was in 1941 that J&K National Conference joined All India States' People's Conference (AISPC) and Sheikh Abdullah came more close to Nehru and the Indian National Congress.

NC started working in association with AISPC. Abdullah came closer to INC. It was on 9th August, 1942 that Congress adopted a resolution for Quit India movement against the British Raj. The National Conference working committee also passed an official resolution supporting Quit India Movement. But to the surprise of many in the India National Conference celebrated 23rd August, 1942 as KASHMIR National day. At that time no one could imagine that this would follow with a Quit Kashmir call by the National Conference in May 1946. No doubt, this Quit Kashmir call was later explained by Sheikh Abdullah and his men to be against the Prince of Jammu and Kashmir as part of Quit India movement. *'Quit Kashmir' call was in a way a game plan that indirectly suggested that Sheikh Abdullah wanted Maharaja Hari Singh to accede to India and handedover the local government to the National Conference like British was to do with Congress in India.*

Mohammed Ali Jinnah also visited the Kashmir Valley in June 1944. Publicly Jinnah said he was on a private visit due to health reasons. But he was on a political mission. Jinnah did not receive any favourable response from All J&K National Conference. Whereas August 1945 session of NC at Sopore had Jawahar Lal Nehru, Abdul Gaffar Khan and Maulana Azad as special invitees. It was in this session that Sheikh Abdullah spelt his concept of Naya Kashmir. Sheikh Abdullah declared before Nehru and Azad that the future and independence of J&K was inextricably linked with future and independence of India. Even then Sheikh Abdullah did not give any hint for his Quit Kashmir call that could follow in 1946. May be privately he had shared his intentions with Nehru. This later became the cancerous irritant for Maharaja Hari Singh even though he extended extreme support to Sheikh Abdullah.

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24

Cabinet Mission Plans, Accessions and Instrument of Accession

I shall just draw the attention to a few of the records that are related to independence of British India, preparations before passing of the Indian Independence Act, exercise done by British for peaceful transition and facilitating entering into some relationship by the Freed Princes with the Indian Dominion/ Pakistan Dominion/Staying outside on interim basis/ permanent basis till the Dominions/Princes draw out their own constitutions/policy of governance (particularly as regards the Princely States after the Crowns cover/Paramountcy would not be available to the Princes in practice). So, those who contest that the Indian Independence Act, 1947 lays down that Princely States will have to/or can accede to either dominion only for three subjects had made/are making overstatement. The Indian Independence Act, 1947 of the British Parliament nowhere said like this. No doubt, as said earlier in view of the time and circumstances in hand, the best immediate path that was suggested/taken was that the acceding states that did not decide immediately for total merger. As an immediate measure, it was decided to accept Paramountcy of the either dominion for three subjects that earlier the Crown handled to avoid crisis and misgovernance. It needs to be appreciated that Sir Cyril Radcliffe who got hardly 6 weeks to decide final boundaries for new Dominion of Pakistan to be carved out from British India (commonly understood as Radcliffe Line) before 15th August, 1947, could not complete the exercise about the future of the Gurdaspur District of East Punjab.

In 1927, the British proposed a Constitution for India on the recommendations of the Simon Commission, but without success. The election of Ramsay MacDonald's Labour government in 1929 aroused new hopes for progress towards self-government in India. Gandhi travelled to London. The fall of the Labour government in 1931 weakened the hopes. The British for the first time proposed in the 1935 Government of India Act, to handover substantial power to the elected Indian Provincial legislatures, with elections to be held in 1937. After the elections, the League took office in Bengal and Punjab with Jinnah again taking over the reins. Congress won office in most of the other Indian states. At a League Conference in Lahore in 1940, Jinnah said: "The Hindus and Muslims belong to two different religions, philosophies, social customs and literature."

The world economic order changed after the second World War. By 1946, the British had neither the will nor the financial or military power, to hold India anymore.

Early in 1946, the Labour Government in Britain dispatched an all-party parliamentary delegation (also known as Cabinet Mission) to India to meet the Indian leaders to stress the British desire for an early settlement of the Indian constitutional issue. The British Cabinet Mission of 1946 to India aimed to discuss and finalise plans for the transfer of power from the British Raj to Indian leadership, providing India with independence under Dominion status in the Commonwealth of Nations. Britain's Prime Minister, Clement Attlee, sent the mission to India (three Cabinet Ministers, Lord Pethick-Lawrence, Sir Stafford Cripps and Mr. A.V. Alexander). The mission arrived on 24th March, 1946. The Mission's purposes were as follows:

A. Holding preparatory discussions with the elected representatives of British India and the Indian states in order to secure agreement as to the method of framing the constitution.
B. Setting up of a constitutional body.
C. Setting up an Executive Council with the support of the main Indian parties. The negotiations were conducted

on behalf of the Congress by Abul Kalam Azad assisted by Nehru, Patel and Gandhi. The negotiations were bogged down on the basic question whether India was to remain united or to be split up to satisfy the Muslim League's demand for Pakistan. The Congress opposed to the partition of the country.

The Cabinet Mission also presented a Memorandum on States Treaties and Paramountcy to His Highness the Chancellor of the Chamber of Princes (Nawab of Bhopal) on 12th May, 1946. The brief from the text said the following:

1. "Prior to the recent statement of the British Prime Minister in the House of Commons, an assurance was given to the Princes that there was no intention on the part of the crown to initiate any change in their relationship with the Crown or the rights guaranteed by their treaties and engagements without their consent...."

The Chamber of Princes has since confirmed that the Indian States fully share the general desire in the country for immediate attainment by India of her stature. His Majesty's Government have now declared that if the successor Government or Governments in British India desire independence, no obstacle would be placed in their way. The effect of these announcements is that all those concerned with the future of India wish her to attain independence within or without the British Commonwealth. The delegation has come here to assist in resolving the difficulties which may stand in the way of India fulfilling this wish.

2. During the interim period, which must elapse before coming into operation of new constitutional structure under which British India will be independent or fully self-governing, the paramountcy will remain in operation. But the British Government could not and will not in any circumstances transfer paramountcy to the Indian Government

When a new fully self-governing or independent government or governments come into being in British India, His Majesty's Government's influence with these governments will not be such as to enable them to carry out the obligations of paramountcy. Moreover, they cannot contemplate that British troops would be retained in India for this purpose. Thus, as a logical sequence and in view of the desires expressed to them on behalf of the Indian States, His Majesty's Government will cease to exercise the powers of paramountcy. This means that the rights of the States which flow from their relationship to the Crown will no longer exist and all the rights surrendered by the states to the paramount power will return to the States. Political arrangements between States on one side and the British Crown and British India on the other will, thus, be brought to an end. The void will have to be filled either by the States entering into a federal relationship with successor Government or Governments in British India, or failing this, entering into particular political arrangements with it or them.

Cabinet Mission proposed Plan of 16th May, 1946 (promulgated on 16th May, 1946), the plan to create a united dominion of India as a loose confederation of provinces came to be known its date of announcement:

1. A united Dominion of India would be given independence.
2. Muslim-majority provinces would be grouped—Baluchistan, Sind, Punjab and NWFP would form one group, and Bengal and Assam would form another (Assam was a Hindu-majority province, while both Punjab and Bengal consisted of large populations of Hindus and Sikhs).
3. Hindu-majority provinces in central and southern India would form another group.
4. The Central government would be empowered to run foreign affairs, defence and communications, while the rest of powers and responsibility would belong to the provinces, coordinated by groups.

Cabinet Mission Proposed Plan of 16th June 1946 (An alternative plan proposed on 16th June, 1946 was to arrange for India to be divided into Hindu-majority India and a Muslim-majority Pakistan. The princely states of India would be permitted to accede to either dominion). Though not immediately accepted, this plan proved very near to the final settlement later.

When talks nearly broke down, Attlee sent Earl Mountbatten, India's last Viceroy, to negotiate the partition of India for early withdrawal of British. From all technical angles, the Accession of J&K as of 1947 with the Indian dominion is complete and legitimate. Under the Indian Independence Act Prince of J&K was the only designate authority to decide for Accession. Maharaja Hari Singh unconditionally acceded to Dominion of India and also initiated for a duly elected Constituent Assembly where all the 75 National Conference leaders got elected. Though not required as per the instrument of Accession signed by the Prince of J&K, still the Constituent assembly also confirmed the accession with India.

The separatists and votaries of conditional accession plead that J&K cannot be compared with other Princely States that acceded with India. Some of the separatists were successful in spreading the forged message that the Instrument of accession signed by Maharaja Hari Singh was special one and unlike other States, it was only for three subjects. They have also succeeded in carrying messages to innocent masses in the Kashmir Valley and outsiders against the accession. (Professing simultaneously against trueness of 1947 Accession.) They have taken decades; so India too will have to work hard to defeat the anti-accession ideology and convictions that might have (in fact, have) registered confusions, misunderstandings or/and protests in the minds of people of J&K in general and the Kashmir Valley in particular. Whereas the fact was that structure and the text and the spirit of the instrument of accession used by almost all princely states that acceded the Indian dominion was the same. I shall produce here some relevant portions from the Address by Lord Mount Louis Mountbatten < Representative of the British Crown > to a Special Full Meeting of the Chamber of Princes on 25th July, 1947:

"...It took two years to separate the province of Orissa from Bihar. Gentlemen, we decided that in less than two-and-a-half months, we shall have to go through the partitioning of one of the biggest countries in the world with 400 million inhabitants. There was a reason for the speed. I was quite certain that while the British lordship remained, no satisfactory conclusion could be reached psychologically between parties. So, once the two governments set up and separated, they would be able to try and finish out the details in an atmosphere of goodwill. Now the Indian Independence Act releases the States from all their obligations to the Crown. The States will have complete freedom technically and legally independent. The first step was to set up a machinery by which it was possible to put the two future Governments of India (The Dominion of India and Pakistan) into direct touch with the States. So, I conceived the scheme of setting up two States' departments within the future Governments. The States' Departments are to take over those subjects gradually which have nothing to do with paramountcy but which will be concerned with relations with neighbouring States and also provide the machinery to negotiate in such matters. In India. States' Department is under the admirable guidance of Sardar Vallbhbhai Patel with my own Reforms Commissioner, Mr. V.P. Menon, as Secretary. In Pakistan, the department is under Sardar Abdur Rab Nishtar with Mr. Ikramullah as Secretary. But when I say that they are at liberty to link up with either of the Dominions, may I point out that there are certain geographical compulsions which cannot be evaded? Out of something like 565 States, the vast majority are irretrievably linked geographically with the Dominion of India. The problem, therefore, is of the greater magnitude with the Dominion of India than it is with Pakistan. In case of Pakistan, the states, though important, are not so numerous, and Mr. Jinnah the future GG of Pakistan, is prepared to negotiate the case of each State separately and individually. But in case of India, where the overwhelming majority of States are involved, clearly says negotiations with each State is out of question... *The first step that I took was to suggest that in the Bill before Parliament... the Indian Independence Act... a clause should be put which would enable certain agreements to continue until renounced by either side. That was only done to ensure that there should be some continuity if, in short time available, it was not possible to get the agreement through with every State representative. It does not replace the need for standstill agreement; it gives a small breathing time...* Now I say it is not an exaggeration to say that most Rulers and Dewans were apprehensive as to what results when paramountcy lapsed. .....You can imagine how relieved I was, and I am sure you will yourself have been equally relieved, when Sardar Vallbhbhai Patel on taking over the States' Department made, if I may say so, a most statesman-like statement of what he considered were the essentials towards agreement between the States and Dominion of India. Let us turn for one moment to the Cabinet Mission of 16th May, 1946. In this Plan, the proposal was that the States should surrender to the Central government three subjects. Defence, External Affairs and Communication. That was a plan, that to my belief, every Ruler and State accepted as reasonable, fair and just. Therefore, I am sure you will agree that these three subjects were handled for your convenience and advantage by a larger organisation. The draft Instrument of Accession was circulated as a basis for discussion (and not for publication) to the representatives of the States, provided the States accede to the appropriate Dominion on three subjects only without any financial liability. But I must make it clear that I have still to persuade the Government of India to accept it. But many may be surprised to learn that New Delhi has not been able to carry the fact down to people that the draft instrument of accession proposed to all the Princely States had the same subjects and text.

The Princely States that acceded Pakistan were very less in number. Some of them were not more than small Jagirs. The states that could be listed are Amarkot (Umerkot) in Sindh, Pakistan (also known as Rana Jagir-population of 12,000, Amarkot Ranas extended assistance to Mughal Humayun when he was escaping the Afghan Sher Shah Suri, it is said that it became the birthplace of Akbar), Amb (Tanawal state), Pakistani Frontier state, Baltistan (western Tibetan kingdom, since 1840 subject to J&K) in Pakistan occupied J&K, Chitral Pakistani Frontier State, Dir (Dhir) Pakistani Frontier State, Hunza Pakistani Frontier State, Kalat in Pakistani Baluchistan, Khairpur in Pakistan, Kharan in Pakistani Baluchistan, Las Bela in Pakistani Baluchistan, Makran in Pakistani Baluchistan, Swat Pakistani Frontier State and Bahawalpur.

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25

Nehru did not want to Take Any Chance

May be Nehru feared (he appeared to fear) that Hari Singh would use the provisions of the Independence Act and deny opportunity to Sheikh Abdullah to become the head of the democratic government in State. Hence, under the circumstances in hand today, India cannot easily brush aside the acts of Mountbatten and Nehru that have provided ink to draft the demands of separatists and help Pakistan draft petitions against India. *These have to be exposed and nullified before the common people of Kashmir as well as the international community rather sleeping over the requirement. Wrongs have to be explained to common man of the Kashmir Valley and international community, and even to the people of other Indian states as well.* People of J&K, in particular, have paid enough price for the mistakes of New Delhi in terms of loss to communal harmony, mutual trust, disturbed conditions, and loss of blood and property of innocent subjects' right from 1947. Billions of rupees sent to Jammu and Kashmir for assistance and development have been misutilised and could not win the trust of the people of the Kashmir Valley. Indian politicians have so far tried to strengthen the Delhi throne by taking an advantage of Kashmir affairs. Rather J&K affairs have been the victim of political gamesmanship.

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26

'Quit Kashmir' Call of Sheikh Abdullah

It was the 'Quit Kashmir' call of Sheikh Abdullah that had not been rightly addressed by Congress. And now even in 2013, the same is being quoted by his men in helm of power as a principled opinion that the Kashmiris carried before 1947. I would, hence, briefly discuss the Treaty of Amritsar March 1946 under which the Kashmir Valley was transferred to Maharaja Gulab Singh, the then Prince of Jammu/Poonch/Kishtwar/ Ladakh/Baltistan/Gilgit, etc. (Treaty of Amritsar, 16th March, 1846. A treaty between the British Government on the one part and Maharaja Gulab Singh of Jammu on the other. Concluded on the part of the British Government by Frederick Currie, Esq. and Brevet-Major Henry Montgomery Lawrence, acting under the orders of the Rt. Hon. Sir Henry Hardinge, G.C.B., one of her Britannic Majesty's most Honorable Privy Council, Governor-General of the possessions of the East India Company, to direct and control all the affairs in the East Indies and by Maharaja Gulab Singh in person – 1846).

Article-1 reads < The British Government transfers and makes over forever in independent possession to Maharaja Gulab Singh and the heirs male of his body all the hilly or mountainous country with its dependencies situated to the eastward of the River Indus and the westward of the River Ravi including Chamba and excluding Lahol, being part of the territories ceded to the British Government by the Lahore State according to the provisions of Article IV of the Treaty of Lahore, dated 9th March, 1846.>

Article 2 reads <The eastern boundary of the tract transferred by the foregoing Article to Maharaja Gulab Singh shall be laid down by the Commissioners appointed by the British Government and Maharaja Gulab Singh respectively for that purpose and shall be defined in a separate engagement after survey.> and

Article 3 Reads < In consideration of the transfer made to him and his heirs by the provisions of the foregoing Article Maharaja Gulab Singh will pay to the British Government the sum of seventy-five lakhs of rupees (Nanukshahee), fifty lakhs to be paid on or before 1st October of the current year, A.D., 1846. >. This Article explicitly negates all those who say that Gulab Singh had purchased the Kashmir Valley from the British whereas the fact is that Raja Gulab Singh's territories of Jammu, Poonch, Kishtwar, Ladakh, Gilgit, even Baltistan and the governor of the Kashmir Valley was under the suzerainty of Punjab Sikh Empire (also called Lahore State) that had fallen before the British and the defeated Sikh Empire had ceded to the British Government but under the provisions of Article IV of the Treaty of Lahore, dated 9th March, 1846, suzerainty of these areas/compensations for the battle. Under the Amritsar treaty, the British India Government recognised as independent Maharaja outside the Lahore State and, hence, Kashmir Valley also became part of Dogra Raj, Princely State of Jammu and Kashmir appeared. No doubt, some ministers and advisors in Lahore Darbar of Daleep Singh were envy to the influence of Gulab Singh in Lahore Darbar so proposed to surrender some parts under the influence of the Sikh Empire including territories of the Kashmir Valley territories and some areas of Gulab Singh to the British expressing inability to pay the war compensation demanded or imposed by British Raj. So, the Amritsar treaty came with Gulab Singh, who had very close and cordial relations with British Raj. He had earned the British appreciation in operations in Afghanistan. A part of text from Lahore Treaty of 9th March, 1946 between the East India Company and, for the Sikhs, by the seven-year-old Maharaja Daleep Singh Bahadur would be quite revealing here:

Article 1. There shall be perpetual peace and friendship between the British Government on the one part and Maharaja Daleep Sing, his heirs and successors on the other…

Article 3. The Maharaja cedes to the Hon'ble Company, in perpetual sovereignty, all his forts, territories and rights in the Doab or country, hill and plain, situated between the Rivers Beas and Sutlej.

Article 4. The British Government having demanded from the Lahore State, as indemnification for the expenses of the war, in addition to the cession of territory described in Article 3, payment of one-and-a-half crore of Rupees, and the Lahore Government being unable to pay the whole of this sum at this time, or to give security satisfactory to the British Government for its eventual payment, the Maharaja cedes to the Honourable Company, in perpetual sovereignty, as equivalent for one crore of Rupees, all his forts, territories, rights and interests in the hill countries, which are situated between the Rivers Beas and Indus, including the Provinces of Cashmere and Hazarah…

Article 5. The Maharaja will pay to the British Government the sum of 60 lakhs of Rupees on or before the ratification of this Treaty.

I hope these quotes would settle some misunderstandings.

Similarly, it is not wise to accept some actions, compositions and orders of the British and reject the others. The British was a foreign power that had unduly and unlegitimately encroached upon the lands and rights of the people of the Indian subcontinent. Indian people have every right to undo and reject the "destiny" as was written for India by the British Parliament. But for the sake of peace in the subcontinent and welfare of their own people, the people of (India/Bharat in particular) in 1940s (1945 to 1947) had even accepted the judgements written by those who had been the aggressors. No doubt, if the Indian history is seen and felt from the near, it can be inferred that the Indian people exercised a very special type of democracy while the Monarchs ruled India. So, every Indian has the right to profess and choose a governing system of his choice but no one has any right to disintegrate the territories of India. And in case anyone dares to do so, then the Parliament of India has all powers and responsibilities to nullify any provision or amend any provision that can be used against the Nation. Those who attempt going to the extent of pleading before foreign countries against their own country, need be treated under the law they deserve.

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27

Indian Independence Act too Not Well Carried

Even the contents of the Indian Independence Act, 1947 have not been properly communicated to the people as regards to the timing/circumstances of accession as well as the rights of the Raja/Maharaja/Nawab of a Princely/Native State. In this regard, particular reference is drawn to Section 2, Section 5 and Section 7 of the Indian Independence Act, 1947.

Section {2} < Nothing in this section shall prevent any area being at any time included in or excluded from either of the new Dominions, so, however, that – (a) no area not forming part of the territories specified in subsection (1) or, as the case may be, subsection (2), of this section shall be included in either Dominion without the consent of that Dominion; and (b) area which forms part of the territories specified in the said subsection (1) or, as the case may be, the said subsection (2), or which has after the appointed day been included in either Dominion, shall be excluded from that Dominion without the consent of that Dominion. Without prejudice to the generality of the provisions of subsection (3) of this section, nothing in this section shall be construed as preventing the accession of the Indian States to either of the new Dominions.

Section 5 < For each of the new Dominions, there shall be a Governor – the Governor-General, who shall be appointed by His Majesty and shall represent His Majesty for the purposes of the government of the Dominion; the new Dominions. Provided that, unless and until provision to the contrary is made by a law of the Legislature of either of the new Dominions, the same person may be the Governor-General of both the new Dominions.>.

7 SECTION < (1) As from the appointed day.

(a) His Majesty's Government in the United Kingdom have no responsibility as respects the government of any of the territories which, immediately before that day, were included in British India;

(b) the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to the Indian States, all obligations of His Majesty existing at that date towards the Indian States or the rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to the Indian States by treaty, grant, usage, sufferance or otherwise, and

(c) there lapse also any treaties or agreements in force at the date of the passing of this Act between His Majesty and any persons having authority in the tribal areas, any obligations of His Majesty existing at that date to any such persons or with respect to the tribal areas, and all powers, rights, authority or jurisdiction exercisable at that date by His Majesty in or in relation to the tribal areas by treaty, grant, usage, sufferance or otherwise. *Provided that, notwithstanding anything in paragraph (b) or paragraph (c) of this subsection, effect shall, as nearly as may be, continue to be given to the provisions of any such agreement as is therein referred to which relate to customs, transit and communications, posts and telegraphs, or other like matters, until the provisions in question are denounced by the Ruler of the Indian State or person having authority in the tribal areas on the one hand, or by the Dominion or Province or other part thereof concerned on the other hand, or are superseded by subsequent agreements.* (2) The assent of the Parliament of the United Kingdom is hereby given to the omission from the Royal Style and Titles of the words "Indiae

Imperator "and the words "Emperor of India" and to the issue by His Majesty for that purpose of His Royal Proclamation under the Great Seal of the Realm.

It could be inferred (particularly in view of Section-7) that the right of the Prince of Jammu and Kashmir has not been honoured by the then Government of Independent India Dominion.

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28

Standstill Agreement

In view of the local political irritants and circumstances in hand, like the delayed Radcliffe Award on the East Punjab and West Punjab (West Pakistan) boundaries, it was on 12th August, 1947 that Maharaja of J&K decided to negotiate for the time being a standstill agreement with India and Pakistan. The Government of India sent a telegram for Maharaja or his representative to visit Delhi for discussions. Through the Standstill Agreement, Maharaja of J&K, in fact, wanted time for the arrangements like the British Paramountcy, British India Dominion and empire of pre-14th August, 1947 still to prevail, wherein the respective functions earlier performed by the British India Dominion and empire.

It would for some time be performed by both India and Pakistan depending upon the centers where control rested as it was during British times. Pakistan accepted and Standstill Agreement was formally signed on 18th August, 1947. Pakistan was authorised to operate the Kashmir posts and telegraph department. Pakistan was also obliged to allow supply of foodstuffs and other necessary items under the agreement. But conditions in J&K did not remain calm even after the Standstill Agreement was signed by Pakistan. As per Maharaja Hari Singh, Pakistan indirectly violated the agreement. Section 7 of the Indian Independence Act, 1947 too had provided...

"Provided that, notwithstanding anything in paragraph (b) or paragraph (c) of this subsection, effect shall, as nearly as may be, continue to be given to the provisions of any such agreement as is

therein referred to, which relate to customs, transit and communications, posts and telegraphs, or other like matters, until the provisions in question are denounced by the Ruler of the Indian State or person having authority in the tribal areas on the one hand, or by the Dominion or Province or other part thereof concerned on the other hand, or are superseded by subsequent agreements."

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29

Pakistan Violates Standstill Agreement

Pandit Ram Chander Kak, Maharaja's Prime Minister, was in a way removed from premiership by Maharaja Hari Singh and replaced by Maj. Gen. (Retd.) Janak Singh on 12th August, 1947, who was also relieved of his responsibility in October, 1947. On 15th October, Justice Mehar Chand Mahajan took over as the Prime Minister of Jammu and Kashmir. And on 18th October, Maharaja's Government, through a telegram to Pakistan's Prime Minister, protested against the violation of Standstill Agreement by Pakistan. Pakistan, though entered into Standstill Agreement, had an eye on Jammu and Kashmir. Before the visit of Mr. Mehar Chand Mahajan to New Delhi for discussions regarding Standstill Agreement, J&K was openly invaded by infiltrators in the cover of tribesmen from North-West Frontier Province of West Pakistan violating borders adjoining Pakistan on 21st October night of 1947. Even the National Conference appealed to Pakistan not to precipitate matters. In policy, Sheikh Abdullah and his party rejected any possibility of accession with Pakistan since it attacked Kashmir. The very basis of birth of Pakistan was against the principles of NC. Sheikh Mohammed Abdullah had made his views clear about the future of the state when he said, "Till the last drop of my blood, I will not believe in the two-nation theory."

30

India did not Immediately Extend Military Help

Maharaja Hari Singh had been requesting India for supplying Petrol and Ammunition on payment basis. Sheikh Abdullah also flew to New Delhi in October 1947 and appealed to the Indian Cabinet to dispatch armed forces to help Maharaja's forces to expel the invaders. Maharaja appealed to India for military help on 24th and 25th November, 1947. *A defence Committee headed by Mountbatten considered the request of Maharaja Hari Singh for supply of arms and ammunition on 25th November, 1947. But the Indian Cabinet was of the opinion that it could not send troops to Srinagar unless J&K acceded to India.* The invader forces, allegedly let loose by Pakistan on the State, were marching on with the aim of capturing Srinagar, the summer capital of his government, as a first step to capture the whole State.

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31

Menon did Succeed in Making Hari Singh a Little Soft

It was on 25th November, 1947 that Mr. V.P. Menon, Secretary in States Ministry, was sent to Srinagar to explain to the Maharaja the position. He met the Maharaja. Menon found conditions grave in Srinagar. But Hari Singh was not ready to accept 'Quit Kashmir' plan of Sheikh and Nehru. Menon did succeed in making Hari Singh a little soft towards Sheikh Abdullah. He advised the Maharaja to leave for Jammu so that raiders are not able to lay hands on him directly or with local help. Maharaja Hari Singh left Srinagar by car and reached Jammu on the morning of 26th November, 1947. V.P. Menon returned to Delhi from Srinagar on 25th November, 1947 (some say in the morning of 26th October) Defence Committee again met on 26th November, 1947 and decided to accept the instrument of accession if executed by the Maharaja. Menon again came to Jammu with the standard draft of instrument of accession on 26th November, 1947 itself. Maharaja had travelled during last night from Srinagar and was asleep. V.P. Menon got the instrument of accession signed by the Maharaja on 26th November, 1947 and carried to New Delhi under a covering letter the same day. Maharaja also conveyed to Lord Mountbatten that he is going to ask Sheikh Abdullah to carry the responsibilities of interim Government in the emergency with his Prime Minister, Mehar Chand Mahajan. Mehar Chand Mahajan was an irritant for Nehru from the day one of his appointment/selection as Prime Minister of J&K by Maharaja Hari Singh in October 1947. Vallabhbhai Patel (Minister for Home and States Ministry) was for Mehar Chand Mahajan. Maharaja in his letter dated 26th October, 1947 did convey to Mountbatten that Afridis, soldiers in plain clothes, and desperadoes with modern weapons have been allowed by Pakistan to infiltrate into his State, at first in the Poonch area, then from Sialkot and finally in a mass in the area adjoining-Hazara district on the Ramkote side and a large number of women have been kidnapped and raped, making his heart bleed. Maharaja had conveyed that both Muslims and non-Muslims of his State have not taken part at all in disturbing the government. But Nehru and Mountbatten were still hesitant. It is also said by the elders that Mehar Chand Mahajan even threatened to proceed to Karachi and offer Kashmir to Jinnah to secure safety of people of J&K. (may be some hints emerge from letter of 27th October that Mehar Chand Mahajan, PM of Hari Singh wrote to Sardar Patel.

"My dear Sardar Patelji, His Highness and Myself are deeply grateful to you for what you did for Kashmir yesterday. H.H. asks me to convey to you personally his sense of deep obligations for this timely help which was so quickly given. I only depend on your valuable advice and guidance. I apologise for any foolish words I may have said. Now the whole matter is in your hands. Kindly send me the Mysore Model and I will send you my views how far it can be adopted to a backward State like Kashmir. You can yourself with Bakshiji (Bakshi Tek Chand) finalise it and then I will come for final discussions. With kindest regards and my thanks once again. It was a most momentous and quick decision ever taken by politicians in India."

Mountbatten signed the instrument of accession on 27th October, 1947 and conveyed to the Maharaja under his letter that in consistence with the policy of his government that in the case of any State where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State and it was the wish of his Government that, as soon as law and order have been restored in Kashmir and its soil cleared of the invaders, the question of the State's accession should be settled by a reference to the people. So, it was nearly laid down to hold a plebiscite in the State when law and order situation permitted so. Maharaja of J&K is remembered by all important people for the stand he took in Round Table Conference in London in favour of Independence of India. Then Hari Singh had almost advised the British to leave it to Princes for post-Independence settlement with the Governments of proposed Dominions of India and Pakistan; and do not worry about the personal status/condition of Princes of the acceding states.

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32

Sheikh Abdullah Pledged Loyalty

Under pressure from the Government of Jawahar Lal Nehru and undertakings with assurances from Sheikh Mohammed Abdullah, he and most of his colleagues were released from jails on 29th September, 1947 by Maharaja's Government. Sheikh Abdullah's letter dated 26th September, 1947, addressed to Maharaja Hari Singh, among other things, said *"In spite of what has happened in the past, I assure, Your Highness, that myself and my party have never harboured any sentiment of disloyalty towards Your Highness's person, throne or dynasty... I assure your highness the fullest and loyal support of myself and my organisation... Before I close this letter, I beg to assure Your Highness once again of my steadfast loyalty and pray that God may grant me opportunity enough to let this country attain under your Highness's aegis such an era of peace, prosperity and good government..."* But the loyalties pledged did not remain truthful towards Hari Singh, the prince of J&K. No doubt, as regards to Pakistan, Sheikh Abdullah while addressing a mammoth public meeting at Hazuri Bagh, Srinagar on 1st October, 1947, had (half) expressed his views about the future of the state saying < "Till the last drop of my blood, I will not believe in two-nation theory">. But finding their designs on Kashmir not fructifying, Pakistan rulers had later launched/engineered/tailored armed attack on Jammu and Kashmir to annex it.

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33

May be Hari Singh would have Done it Earlier

J&K State had the maximum confusions and ambitions/hopes and fuel was added to the same by the extra favouritism Nehru showed for Sheikh Abdullah to the annoyance of Maharaja Hari Singh. *Hari Singh did have preference for India over Pakistan. But surely Maharaja did not relish handing over power to Sheikh Mohammed Abdullah like the British was to hand over to the Congress. May be Hari Singh would have settled before 15th August, 1947 or even a month later with some other leader from NC if proposed by Indian leadership.* One thing is sure that Jawahar Lal Nehru was very particularly rigid to appoint Sheikh Abdullah simultaneously as head of the Local State Administration (Prime Minister) as a precondition to the Dominion of Independent India accepting the Instrument of Accession (if offered by the Maharaja). This was not agreeable to the Maharaja and was also not in line with the policy of the All India State People's Conference and National Congress Policy in regard to the Princely States, i.e., responsible government under the aegis of the Ruler. This surely resulted in delayed accession for which discussions had started in 1946 itself. No "logical" reason could be found by me to justify Nehru for his different approach for Jammu and Kashmir, insisting only for Sheikh Abdullah with powers something like more than the Prince of State.

The delay on the Part of Maharaja Hari Singh also provided about two months' time to Mohammed Ali Jinnah and his

Pakistan to gain some oxygen and think of military action in the Muslim-majority Princely State of J&K or for playing the card of religion or both. Pakistan leadership had started since September 1947, sending Pakistani infiltrators across Jehlum from Rawalpindi to mix with locals and arouse their religious sentiments.

Sensing deep differences between Nehru & Hari Singh, the Pakistani Government started offering attractive terms to Hari Singh for joining Pakistan, though he did not oblige Pakistan. Of course, after 15th August, 1947, Hari Singh and his advisors (including Ram Chand Kak, then PM of the State) had also started receiving suggestions for remaining outside of both the Dominions of India and Pakistan. The changed circumstances around could prompt Hari Singh for option of independence as did also allegedly happen later with Sheikh Mohammed Abdullah. Maharaja Hari Singh had given geographical justifications for such proposals being under examination in his letter dated 26th October, 1947 addressed to Mountbatten, covering the instrument of accession as was sent to the Government of India through V.P. Menon.

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34

Indian Complaint to Security Council

On 1st January, 1948, India took up the issue of Pak aggression in Jammu and Kashmir in UNO under Article 35 of UN charter. The Government of India, in its letter to the Security Council, said…

<Such a situation now exists between India and Pakistan owing to the aid which invaders, consisting of nationals of Pakistan and tribesmen… are drawing from Pakistan for operations against Jammu and Kashmir, a State which has acceded to the Dominion of India and is part of India>.

The Government of India requested the Security Council to call upon Pakistan to put an end immediately to the giving of such assistance which is an act of aggression against India and submitted that if Pakistan did not resist, the Government of India would be compelled, in self-defence, to enter into Pakistan territory to take military action against the invaders. The presence of Pak regular troops in the Valley was pointed out even by UNCIP documents (UNCIP first report). During one of the debates in UN Security Council on 5th February, 1948, Sheikh Mohammed Abdullah had pleaded that "aggression and not the accession is the issue". But the way the Government of India drafted complaint and pursued it further did unduly make the position difficult. It was exactly after one year on 1st January, 1949 that India declared ceasefire with the intruders from across the borders of J&K with Pakistan. At the time of ceasefire, Pakistan was said to be holding 83,000 sq. kms illegally and this aggression on that territory continues even today. Over the years, Pakistan and the anti-India forces have succeeded in describing the Indian complaint in United Nations Security Council as a dispute between India and Pakistan or for some as dispute between the Kashmiris and New Delhi or for some a dispute regarding 1947 accession of J&K with India. All this has happened due to wrong handling also, unwise documentation and insincere attitude of the Indian leaders towards the national issues (Indian dominion interests). A dispute has been got registered at international levels out of no dispute by anti-India and anti-1947 accession elements. New Delhi failed on many counts. To quote, let me draw the attention to the text of letter dated 1st January, 1948, from the Representative of India to the President of the Security Council (S/628) submitted telegraphically:

Para {2} reads: "From the middle of September 1947, the Government of India had received reports of the infiltration of armed raiders into the western parts of Jammu Province of the Jammu and Kashmir State; Jammu adjoins West Punjab, which is a part of the Dominion of Pakistan. These raiders had done a great deal of damage in that area and taken possession of part of the territory of the State. On 24th October, the Government of India heard of a major raid from the Frontier Province of the Dominion of Pakistan into the Valley of Kashmir. Some two thousand or more fully armed and equipped men came in motor transport, crossed over to the territory of the State of Jammu and Kashmir, sacked the town of Muzaffarabad, killing many people, and proceeded along the Jhelum Valley Road towards Srinagar, the summer capital of the Jammu and Kashmir State. Intermediate towns and villages were sacked and burnt, and many people killed. These raiders were stopped by the Kashmir State troops near Uri, a town some fifty miles from Srinagar, for some time, but the invaders got around them and burnt the powerhouse at Mahura, which supplied electricity to the whole of Kashmir."

Para {4} reads: "Immediately after the raids into the Jammu and Kashmir State commenced, approaches were informally made to the Government of India for the acceptance of the accession of the State to the Indian Dominion. (It might be explained in parenthesis that Jammu and Kashmir forms a State whose ruler, prior to the transfer of power by the United Kingdom to the Dominions of India and Pakistan, had been in treaty relations with the British Crown, which controlled its foreign relations and was responsible for its defence. *The treaty relations ceased with the transfer of power on 15th August last, and Jammu and Kashmir like other States acquired the right to accede to either Dominion.*)."

Para {5} reads: Events moved with great rapidity, and the threat to the Valley of Kashmir became grave. On 26th October, the ruler of the State, His Highness Maharaja Sir Hari Singh, appealed urgently to the Government of India for military help. He also requested that the Jammu and Kashmir State should be allowed to accede to the Indian Dominion. An appeal for help was also simultaneously received by the Government of India from the largest popular organisation in Kashmir, the National Conference, headed by Sheikh Mohammed Abdullah. The Conference further strongly supported the request for the State's accession to the Indian Dominion. *The Government of India was thus approached not only officially by the State authorities, but also on behalf of the people of Kashmir, both for military aid and for the accession of the State to India.*

Para {6} reads: The grave threat to the life and property of innocent people in the Kashmir Valley and to the security of the State of Jammu and Kashmir that had developed as a result of the invasion of the valley demanded immediate decision by the Government of India on both the requests. It was imperative on account of the emergency that the responsibility for the defence of the Jammu and Kashmir State should be taken over by a government capable of discharging it. But, in order to avoid any possible suggestion that India had utilised the State's immediate peril for her own political advantage, the Government of India made it clear that once the soil of the State had been cleared of the invader and normal conditions restored, its people would be free to decide their future by the recognised democratic method of a plebiscite or referendum which, in order to ensure complete impartiality, might be held under international auspices.

Through the text of Indian Complaint of 1st January, 1948 to the UN Security Council, which is self-explanatory, I do not think Pakistan or Kashmiri separatists or even the votaries of conditional accession have not been provided enough material to throw challenges on India about the 1947 Accession that was otherwise within and as per the provisions available.

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35

UN did not do Anything to get the Lands of J&K Cleared of Invader

Among other reasons may be the venom against India still flowed in the British veins and a British design reflected in the manner the instrument of accession was accepted by Mountbatten. The manner in which the UK and the US sided with Pakistan in the UN Security Council while addressing the complaint made by India against Pakistan does reflect the "hurt" of British mindset immediately after British retreat from India. Pakistan, the aggressor, was being treated at equal footing with India, the complainant. During one of the debates in UN Security Council on 5th February, 1948, Sheikh Mohammed Abdullah too had said "aggression and not the accession is the issue". The Security Council, however, still passed a resolution on plebiscite in Jammu and Kashmir, subject to certain conditions. The partisan working of the Security Council well emerged from the fact that the UN Security Council, which met on 21st February, 1951 to consider the report of Sir Owen Dixon, instead decided by a resolution sponsored jointly by the UK and the USA to send another UN representative to India and Pakistan in succession to Sir Owen Dixon "to effect the demilitarisation of the State of Jammu and Kashmir on the basis of the demilitarisation proposals made by Sir Dixon in his report with any modifications which the UN representative deems advisable, and to present to the Government of India and Pakistan detailed plans for carrying out plebiscite in the State of Jammu and Kashmir". This resolution was passed with slight modification in spite of the opposition of India by a majority vote on 30th March, 1951. None voted against it but the USSR and Yugoslavia abstained.

Lord Mountbatten's letter of 27th October, 1947 was unilaterally used against India even by the UN Security Council without taking cognisance of the contents of the letter, where it had said:

< *It is my Government's wish that, as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the question of the State's accession should be settled by a reference to the people* >.

UN did not do anything to get the lands of J&K cleared of invader, the Pakistan forces that admittedly became part of the aggression on the Indian State of J&K that had legitimately acceded with India on 26th October, 1947.

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36

Start of Local Governance in Indian State of Jammu and Kashmir

Jammu and Kashmir's Prime Minister, Mehar Chand Mahajan had sent a strong-worded telegram to Mohammed Ali Jinnah, the Governor-General of Pakistan on 18th November, 1947 asking to interfere personally to check the violation of State borders and, in case of his failure, the J&K Government will have no option than to ask for friendly help from outside. The same day (18th October, 1947), a telegram was sent to PM of U.K. by the J&K Government, informing that about one lakh Muslims from India have been given safe conduct to their new abodes in Pakistan. All knew that raiders were cutting across State borders in J&K. The J&K Prime Minister also informed Indian Leadership that Kotli had been beseized by Pakistani raiders and Poonch was similarly being invaded and there were signs that Mirpur and Bhimber may be the next target and repeated the request to send ammunition and arms as was requested long back. But still Lord Mountbatten, the Governor-General of India wrote to Patel on 25th October, 1947 that as per the information received from Maj. Thomas Wyndord Rees, Head of Military Engineering Staff attached to Emergency Committee of Cabinet, it appeared that Kohala had not been attacked till then, "whereas raiders were far inside the Kashmir Valley and tribesmen advancing at Uri were intercepted by the Kashmir State Troops and heavy battle appeared to be in progress". Mountbatten showed so much of ignorance, rather pretending may be. Mountbatten was still thinking that "needed delay" in sending troops/accepting accession has been made to enable raiders cut off Kashmir from India. To impress his innocence, Lord Mountbatten again wrote to Patel on 27th October that there was no doubt that if India had sent forces a fortnight ago to Srinagar or could have relieved the State Forces in Jammu to go to Srinagar, the position could have been held with comparative ease. Mountbatten opined while writing to Patel that though the Indian troops had landed at Srinagar on 27th October, 1947, and the risk was great and chances of keeping raiders out of Srinagar were no good. Mountbatten further said that it was fortunate that the tribesmen were on loot and since non-Muslims were very less in number in Valley, they will only loot and massacre their own coreligionists and this will give India a political advantage. People of J&K were bleeding and the British man was still looking for political advantages in the blood of the innocent common man. Nehru's love and lust for Sheikh Abdullah had delayed the signing of instrument of accession by Hari Singh and Mountbatten not playing honest. The Governor-General of India had made Kashmir very near to landing in a place of no return. Kashmir too would have been lost to Mountbatten's imagination had the delay been not there at the part of the Raiders, who had come more out of lure for loot and women than for anything else and had stopped on way lured by autumn atmosphere, beautiful landscape of Barmulla, rich prospects of loot and rape of women and had forgotten Jinnah's resolve to celebrate Eid on 25th October, 1947 in Srinagar. Raiders converted every mosque into a brothel and European Nuns of the local mission hospital were also brutally molested and raped. Had they not done so and not spent a couple of days there, Kashmir would have been lost in the name of Nehru and Mountbatten.

Mountbatten formally signed the acceptance on Instrument of Accession on 27th October, 1947 and returned a copy of instrument under cover of a letter to Maharaja. And the first contingent of Indian troops landed at Srinagar airport in the morning of 27th October, 1947. Sheikh Abdullah was invited by Maharaja to form an interim Government on 30th October and carry work in the emergency with his Prime Minister, Mehar Chand Mahajan.

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37

Mountbatten and Nehru had Made the Maharaja of J&K Helpless before Sheikh Abdullah

The events that followed after 26th October, 1947 had many unpleasant notes, particularly, the manner in which the Maharaja of J&K, the local Constitutional head, was treated. Sheikh Mohammed was appointed to function as the Head of the Administration with Power to deal with the Emergency by Maharaja Hari Singh on 30th October, 1947 under order No. 176-H of 1947 Chief Secretariat (General department) Emergency administration:

("We are hereby pleased to command that pending the formation of the Interim Government, as agreed upon and in view of the emergency that has arisen, I charge Sheikh Mohammed Abdullah to function as the Head of the Administration with Power to deal with the Emergency. Sheikh Mohammed Abdullah be sworn in by the Chief Justice or any other Judge of the High Court at Srinagar. Sd/- Hari Singh Maharajadhiraj by order No. 176-H of 1947, 30th October, 1947.)

He was to work with his Diwan but was given over-riding attention by the Government of India.

The J&K affairs were handled by Jawahar Lal Nehru, the PM of India. Maharaja Hari Singh was not even consulted while drafting the complaint against Pakistan and lodging the complaint before UN Security Council on 1st January, 1948. Hari Singh had expressed unhappiness in this regard in his letter of

31st January, 1948 addressed to Vallabh Bhai Patel, the then Deputy Prime Minister. The records of correspondence exchanged between Maharaja Hari Singh and Sardar Patel & Jawahar Lal Nehru would reveal that after the Instrument of Accession was signed by Hari Singh, the Maharaja was made nearly irrelevant by Delhi and instead Sheikh Mohammed Abdullah, who was simply a head of emergency administration till 5th March, 1948 for internal governance, was given undue attention and hearing. It appeared that Nehru still feared that Sheikh may be removed by Maharaja later and for Nehru, Sheikh´s interest was more important than the Nation. Irritants were, hence, still kept in Kashmir that could deepen the confusions and aspirations floated since 1946 in the 'Quit Kashmir' policy that Sheikh Abdullah announced ignoring leadership of Congress as well as All India States' People's Congress.

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38

Sheikh Abdullah too Feared

Circumstances emerged in J&K from August 1947 onwards landed both the Maharaja and the Government of India in a puzzle where Sheikh Abdullah started appearing as a quiz master.

Sheikh too had some fears in the mind regarding there being some possibilities, may be remote, of democratic power going in the hands of some other leader or political group of J&K. In case a regular democratic course was adopted for interim Government since Sheikh's National Conference had the Muslim Conference opposing it in Kashmir Valley, in Jammu Province, the National Conference did not have much base and the Muslim leaders of Jammu, Poonch, Rajouri and other non-Kashmiri-speaking areas of J&K, even in the Kashmir Province were also not unanimously in favour of Sheikh's National Conference. It was on 30th October, 1946 that A.N. Vaid, General Secretary, State Congress Committee wrote from Jammu to Sardar Vallabh Bhai Patel (as President, Parliamentary Committee, All India Congress Committee) that a joint meeting of NC, Congress and Progressive Hindus was held and it was concluded that in January 1947, elections to State Assembly in the Jammu Province should be fought on Congress ticket since the National Conference held little influence in the Jammu Province and there were misgivings about NC as turncoat of the Muslim Conference and NC has done very less ground work in Jammu and, hence, in case elections are fought on the Congress ticket on a joint manifesto four Hindu seats out of seven and one Mohammaden seat out of two will be won by Congress, otherwise all will be lost.

39

Sheikh became a Socio-political Problem for Nehru

It could be inferred from the events that earlier Jawahar Lal Nehru supported Sheikh Abdullah for personal reasons and later on in view of the situations that emerged due to delays and confusions before and after the 26th October, 1947 accession. Sheikh Mohammed Abdullah was nearly open in his objectives. He worked for the common Kashmiri and won legitimate support. From a social activist, he turned into a political leader. He had his own concepts and targets. *He understood that the question of application of two-nation theory based on religion did not have any lawful sanctity as regards the Princely State of J&K. Partition of India on religious lines was not to cover the state of J&K.* Sheikh Mohammed Abdullah was surely not in favour of Mohammed Ali Jinnah's Muslim League. He expressed his thinking openly in 1946, when he questioned the Kashmir agreement that the British India had entered with Maharaja Gulab Singh in 1846. He wanted Maharaja Hari Singh to surrender his rights also over Kashmir with the retreat of British on 14th August, 1947 and transfer of power to the National Conference in Kashmir as it was to be for Congress in India. Of course, Sheikh had said plain no to Pakistan. Sheikh Abdullah did not accept a status like other princely states for Kashmir. Till then, he was bold enough to call himself an Indian, but a special Indian.

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40

Sheikh Made Mockery of Maharaja's Authority with the Support of Delhi

Hari Singh was not taken into Confidence after 27th October, 1947 as regards the decision-making on affairs of J&K, including driving out the intruders from the Indian territories in J&K. Ceasefire was formally declared by India on 1st January, 1949, one year after India went with complaint against Pakistan to UNO. Hari Singh expressed his unhappiness in his letter dated 31st January, 1948, addressed to Sardar Vallabh Bhai Patel over losing Mangla, Alibeg, Gurdwara, the town of Mirpur, the town of Bhimber, the villages of Deva and Batala, the town of Rajouri and the whole of the area adjoining Chhamb, Nowshera, Jhangar and Kotli areas to Pakistan even after two months of J&K acceding to India. Maharaja Hari Singh, in his letter of 31st January, 1948 offered to himself to take the command of Indian forces to drive out the invaders including Pakistani forces out of J&K. Maharaja maintained that the issue of accession was not within the scope of the UN Security Council and UN Security Council had unduly dragged India's complaint out of the context. But it appears that the Government of India bypassed the Maharaja.

Before 1947, Maharaja had established a Constitutional government under the Jammu and Kashmir Constitution Act of 1996 Vikrami (xiv of 1996), 1939 AD with a Council of Ministers, a Legislature with a majority of members as elected and an independent judiciary. Maharaja Hari Singh, the ruler of Jammu and Kashmir and Dependencies, issued proclamation on 5th March, 1948, expressing his desire for the immediate establishment of a fully democratic constitution based on adult franchise with a hereditary ruler from his dynasty as the Constitutional Head of an Executive responsible to the legislature. Maharaja had already appointed the local popular leader, Sheikh Mohammed Abdullah as the Head of the Emergency Administration on 30th October, 1947 and vide proclamation dated 5th March, 1948.

(Proclamation of Shreeman Indar Mohinder Rairajeshwar Maharajadhiraj Shree Harisingh, Ruler of Jammu and Kashmir and Dependencies, dated 5th March, 1948.)

In accordance with the traditions of my dynasty, I have, from time to time, provided for increasing association of my people with the administration of the State with the object of realising the goal of full responsible Government as early a date as possible and in pursuance of that object have, by the Jammu and Kashmir Constitution Act of 1996 (xiv of 1996) established a Constitutional Government with a Council of Ministers, a Legislature with a majority of elected members and an independent Judiciary; I have noted with gratification and pride the progress so far made and the legitimate desire of my people for the immediate establishment of a fully democratic Constitution based on adult franchise with a hereditary ruler from my dynasty as the Constitutional Head of an Executive responsible to the legislature; I have already appointed the popular leader of my people, Sheikh Mohammed Abdullah as the Head of the Emergency Administration; It is now my desire to replace the Emergency Administration by a Popular Interim Government and to provide for its powers, duties and functions, pending the formation of a fully democratic Constitution.

I accordingly hereby ordain as follows:

My Council of Ministers shall consist of the Prime Minister and such other Ministers as may be appointed on the advice of the Prime Minister. I have by Royal Warrant appointed:

1. Sheikh Mohammed Abdullah as the Prime Minister with effect from today.

2. The Prime Minister and other Ministers shall function as a Cabinet and act on the principle of joint responsibility. A Dewan appointed by me shall also be a member of the Cabinet.
3. I take this opportunity of giving once again a solemn assurance that all sections of my people will have opportunities of service, both civil and military, solely on the basis of their merits and irrespective of creed or community.
4. My Council of Ministers shall take appropriate steps, as soon as restoration of normal conditions has been completed, to convene a National Assembly based upon adult suffrage, having due regard to the principle that the number of representatives from each voting area should, as far as practicable, be proportionate to the population of that area.
5. The Constitution to be framed by the National Assembly shall provide adequate safeguards for the minorities and contain appropriate provisions guaranteeing for the freedom of conscience, freedom of speech and freedom of assembly.
6. The National Assembly shall, as soon as the work of framing the new constitution is completed, submit it through the Council of Ministers for my acceptance.
7. In conclusion, I repeat the hope that the formation of a popular Interim Government and the inauguration, in the near future, of a fully Democratic Constitution will ensure the contentment, happiness and the moral and material advancement of my beloved people.

Maharaja replaced the Emergency Administration by an Interim Government with interim powers, duties and functions, pending the formation of a fully democratic Constitution. Hence, Maharaja as local constitutional head appointed by a Royal Warrant Sheikh Mohammed Abdullah as the Prime Minister of interim Government with effect from 5th March, 1948 with the Prime Minister and other Ministers to function as a Cabinet and act on the principle of joint responsibility with the Dewan appointed by Maharaja to be also a member of the Cabinet. The proclamation also ordered that:

(i) Maharaja's Council of Ministers shall take appropriate steps, as soon as restoration of normal conditions has been completed, to convene a National Assembly based upon adult suffrage, having due regard to the principle that the number of representatives from each voting area should, as far as practicable, be proportionate to the population of that area.

(ii) the Constitution to be framed by the National Assembly shall provide adequate safeguards for the minorities and contain appropriate provisions guaranteeing for the freedom of conscience, freedom of speech and freedom of assembly.

(iii) the National Assembly shall, as soon as the work of framing the new Constitution is completed, submit it through the Council of Ministers for Maharaja's approval.

But the manner in which the affairs of the State were handled, the conditions remained in confusion and the impressions that could be gathered from the actions taken over the period, one can make inference that the Maharaja was kept isolated in all the important matters. The policy matters regarding J&K appear to have been taken by the Government of India without any consultations with the Maharaja even for issues wherever it was even appropriate as per the terms of the Instrument of Accession. The elections to the National Assembly were not arranged immediately by the Interim Government. I would reproduce here some text of letter of 6th May, 1949 written by Maharaja Hari Singh to Sardar Patel inference to meeting held on 29th April and 1st May...

"I have been content to follow, sometimes even against my own judgement and conscience, the advice in regard to the constitutional position in the state which I have been receiving from the Prime Minister of India or yourself, sometimes even against arrangements which were agreed to only a few months before. Now would it be fair on my part to conceal from you my own feelings that while Sheikh

Abdullah has been allowed to depart, from time to time as suited his inclinations, from the pledged and written word, to act consistently in breach of the loyalty, which he professed to me prior to his release from jail and the oath of allegiance in a campaign of vilification and foul calumny against me, both inside the State and outside? I should have had to be driven from position to position, each of which I thought I held on the advice of the States' Ministry......"

Anyhow we have no alternative than to go by the official orders and documents only, otherwise unending debates could be initiated by people of different schools of thoughts and the people would be pushed into more and more confusion. Affairs hence would be analysed assuming that the actions of the Government with Regent in place carried the approval of the Maharaja till the new Constitution of J&K was adopted in November 1956 with given effect from 26th January, 1957.

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41

At Last Hari Singh was made to Leave the State

On 30th October, 1947, an Emergency Administration headed by Sheikh Abdullah (Maharaja Hari Singh appointed Sheikh Mohammed Abdullah as the Head of the Emergency Administration) took up the job for carrying out emergent needs along with the Prime Minister of Maharaja Hari Singh (Mehar Chand Mahajan) in the State of J&K. Relations between Maharaja and Sheikh did not remain normal. Though the Government of India succumbed to the ill will of Sheikh and Maharaja's Prime Minister Mehar Chand Mahajan was nearly made defunct. On 5th March, 1948, the Maharaja announced the formation of an interim popular Government with Sheikh Mohammed Abdullah as the Prime Minister. *It was 1st May, 1949 that Sardar Patel suggested Hari Singh for a temporary exit from the State in a meeting at Delhi. It was suggested that Yuvraj Karan Singh be appointed as Regent by Maharaja in his absence. He placed some security and economy-related conditions before Patel on 6th May, 1949. Patel assured Maharaja on 23rd May, 1949 of the security of Yuvraj Karan Singh as Regent and representative of Maharaja. Maharaja accepted the same and communicated his consent while he was staying in Imperial Hotel, New Delhi.* Maharaja Hari Singh signed on 20th June, 1949 proclamation at Delhi, making Yuvraj Karan Singh as the Regent. *Mr. Karan Singh went to Srinagar on 20th June, 1949 for the first time as Regent. And the temporary exit of Hari Singh from J&K became his permanent exit. He temporarily quit* the State of J&K after delegating royal powers of His Highness to Yuvraj Karan Singh. Any how same powers of Regent were used in August 1953 to dislodge Sheikh Mohhamed Abdullah from the position of the Prime Minister. I would reproduce here some text of letter of 6th May, 1949 written by Maharaja Hari Singh to Sardar Patel inference to meeting held on 29th April and 1st May.

<"I have been content to follow, sometimes even against my own judgement and conscience, the advice in regard to the constitutional position in the state which I have been receiving from the Prime Minister of India or yourself, sometimes even against arrangements, which were agreed to only a few months before. Now would it be fair on my part to conceal from you my own feelings that while Sheikh Abdullah has been allowed to depart, from time to time as suited his inclinations, from the pledged and written word, to act consistently in breach of the loyalty which he professed to me prior to his release from jail and the oath of allegiance in a campaign of vilification and foul calumny against me, both inside the State and outside. I should have had to be driven from position to position… each of which though I held on the advice of the States Ministry……..The question that I should remain out of the State for three or four months for reasons of health, will I am afraid, not be believed by anybody and is likely to give rise to many misgivings and speculations within and outside the State as {i} everybody knows that I am not in such a state of health as would necessitate a long outside State……">.

Similarly, it was on 18th May, 1949 that Nehru had written to Patel that …

"….I hope you will explain to the Maharaja and Maharani as well as the Yuvraj the agreements arrived at between us and Sheikh Abdullah and his colleagues. The written agreement rightly does not say anything about Maharaja going out of the State. But this was a private assurance given by us and we have naturally to stand by it …." The references made here would be enough to convey the state of affairs Hari Singh was faced with.

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42

Maharaja had Left J&K Temporarily in 1949 June but Could Not Return

Under the environment as it prevailed and under the advice of his advisors (may be leaders at Delhi), Maharaja Hari Singh had issued a proclamation in June (20th June as per J&K Raj Bhawan website) 1949. The Proclamation read:

"Whereas I have decided for reasons of health to leave the State for a temporary period and to entrust to the Yuvraj Shree Karan Singh Ji Bahadur for that period all my powers and functions in regard to the Government of the State; Now, therefore, I hereby direct and declare the all powers and functions, whether legislative, executive or judicial, which are exercisable by me in relation to the State and its Government, including, in particular, my right and prerogative of making Laws, of issuing Proclamations, Orders and Ordinances, of remitting, commuting or reducing sentences and of pardoning offenders, shall, during the period of my absence from the State, be exercisable by Yuvraj Shree Karan Singh Ji Bahadur. Sd/- Hari Singh Maharajadhiraj":

It was on 1st May, 1949 that Sardar Patel suggested Hari Singh for a temporary exit from the State in a meeting at Delhi. No doubt, it was the same authority of Regent (proclamation as appeared in Government Gazette dated 7th March, 2006) that was used on 8/9th August, 1953 to dislodge Sheikh Mohammed Abdullah from the position of Prime Minister.

But Hari Singh never returned to J&K after that. He died on 26th April, 1961 in Bombay. Let us not discuss the reasons here since the same may not be officially documented. But one thing is sure, and that is, Hari Singh neither was consulted nor was involved in the decisions concerning J&K affairs after that even as an elder and experienced person. All the functions and authorities on his behalf were performed by Regent Yuvraj.

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43

Ultimate Authority Rested in Maharaja and/or the Regent Yuvraj Karan Singh

It cannot be denied that the ultimate authority as Head of State as regards all the issues other than contained in the Instrument of Accession, 1947 rested only in the Maharaja of J&K and thereafter Regent Yuvraj Karan Singh till the Constitution of India and Constitution of J&K were finally drawn. The Proclamation issued by Maharaja on 30th October, 1947 (appointing Sheikh Abdullah as Head of Emergency Administration), proclamation dated 5th March, 1948 issued by Maharaja Hari Singh (appointing Sheikh Abdullah as Prime Minister of interim government and convening of National Assembly by election and drafting of the Constitution by National Assembly to be approved by Maharaja) and proclamation of June 1949 issued by Maharaja (his deciding for reasons of health to leave the State for a temporary period and to entrusting to the Yuvaraj Shree Karan Singh Ji Bahadur for that period all his powers and functions in regard to the Government of the State) need very special attention. Thereafter, it was on 1st May, 1951 that another proclamation was issued by Yuvraj Karan Singh in modification of the proclamation dated 5th March, 1948 as was issued by Maharaja Hari Singh. The proclamation called for electing a Constituent Assembly and framing the Constitution of Jammu & Kashmir. For the unknown reasons and circumstances not elaborated, Yuvraj Karan Singh, using the authority of Maharaja Hari Singh named the contents of the March Proclamation as regards:

Clause 4 (Council of Ministers to take appropriate steps, as soon as restoration of normal conditions has been completed, to convene a National Assembly based upon adult suffrage, having due regard to the principle that the number of representatives from each voting area should, as far as practicable, be proportionate to the population of that area),

Clause 5 (The Constitution to be framed by the National Assembly shall provide adequate safeguards for the minorities and contain appropriate provisions guaranteeing for the freedom of conscience, freedom of speech and freedom of assembly), and

Clause 6 (The National Assembly shall, as soon as the work of framing the new constitution is completed, submit it through the Council of Ministers for Maharaja's/head of state's acceptance) not worth meeting the prevailing requirements as were assessed in May 1951.

Text of the Proclamation issued by the Head of the Jammu and Kashmir State on 1st May

1951<. Whereas it is the general desire of the people of the State of Jammu and Kashmir that a Constituent Assembly should be brought into being for the purpose of framing a Constitution for the State; whereas it is commonly felt that the convening of the Assembly can no longer be delayed without detriment to the future well-being of the State; and whereas terms of the proclamation of the Maharaja dated 5th March, 1948 in regard to the convening of a national assembly as contained in clauses 4 to 6 of the operative part thereof do not meet the requirements of the present situation; I, Yuvraj Karan Singh, do hereby direct as follows:

(1) A Constituent Assembly consisting of representatives of the people, elected on the basis of adult franchise shall be constituted forthwith for the purpose of framing a constitution for the State of Jammu and Kashmir;

(2) For the purpose of the said elections, the State shall be divided into a number of territorial constituencies each containing a population of 40,000 or as near thereto as possible and each electing one member. A delimitation committee shall

be set up by the Government to make recommendations as to the number of constituencies and the limits of each constituency;

(3) Elections to the Constituent Assembly shall be on the basis of adult franchise, that is to say, every person who is a State subject of any class, is not less than twenty-one years of age on the first day of March, has been a resident in the constituency for such period as may be prescribed by the rules, shall be entitled to register in the electoral rolls of that constituency, provided that any person who is of unsound mind or has been so declared by a competent court, shall be disqualified for registration;

(4) The vote at the election shall be direct and by secret ballot;

(5) The Constituent Assembly shall have power to act notwithstanding any vacancy of the Membership thereof;

(6) The Constituent Assembly shall frame its own agenda and make rules for the governing of its procedure and the conduct of its business; The Government shall make such rules and issue such instructions and orders as may be necessary to give effect to the terms of this proclamation.

The proclamation issued by Yuvraj Karan Singh removed the clause of incorporation of Constitutional safeguards for minorities in the future constitution of J&K. Though it could also be inferred from the proclamation that approval of the draft constitution drawn by the constituent assembly was also not needed from the Yuvraj/Maharaja under the changed circumstances but surely such authority was not given by Maharaja to Yuvraj Karan Singh looking at his age to take such major decisions or make indirect amends to the conditions of Instrument of Accession. In the final J&K Constitution, particular safeguards for minorities did not appear, nor were the safeguards anywhere suggested by Sheikh on record to the drafting committee. May be had the Maharaja been in the State, Sheikh Abdullah would not have been able to carry on unchecked, so he used his undue pressures on the Indian Prime Minister for forcing exit of Maharaja Hari Singh from the State.

Amendment of Section 66, Act XIV of 1996....In Section 66 of the said Act, for the words "the commands of His Highness", the words "orders of the Sadar-e-Riyasat" were substituted and for the words "His Highness", where they occur for the second time, the words "the Sadar-e-Riyasat" shall be substituted. The Prime Minister of the State shall communicate the name of the person duly elected by the Assembly as the Sadar-e-Riyasat to the President of India for being recognised as the Sadar-e-Riyasat. All rights, authority and jurisdiction which pertain or are incidental to the Government of the territories of the State of Jammu and Kashmir shall be exercisable by the Sadar-e-Riyasat on the advice of the Council except insofar as may be otherwise provided by or under this Act, and except in regard to those matters enumerated in List I in the Seventh Schedule to the Constitution of India with respect to which the Parliament of India has power to make laws for the State. For the words "Prerogative of His Highness", the words "Powers of the Sadar-e-Riyasat" shall be substituted. In case someone argues that Yuvraj had the authority and intentions to delegate all powers to the Constituent Assembly as regards the new constitution, then it will also have to be accepted that whatever order, concurrences were issued by Yuvraj Karan Singh as head of the State, were also valid and unquestionable.

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The Praja Sabha – Constitution of J&K 1996 Samvat – Constituent Assembly – Legislative Assembly

The Constitution of J&K, 1996 Samvat (1939 AD) had been amended by the Authority of Maharaja from time to time. In terms of the Proclamation dated 1st May, 1951, elections to the Constituent Assembly were held. All the 75 members of the Constituent Assembly as elected belonged to the National Conference. The Constituent Assembly met for the first time in Srinagar on October 31, 1951 with Maulana Masoodi in Chair.

The Jammu and Kashmir Constitution, 1996 Samvat (1939 AD) was amended by the Regent (Yuvraj Karan Singh) in 1951 AD (an Act further to amend the Jammu and Kashmir Constitution Act, 1996. Act No. XVII of 2008, 1951 AD) incorporating among other things the words 'Legislative Assembly' for Praja Sabha, and 'Constituent Assembly' to work as Legislative Assembly till the new constitution is framed and accepted that the Prime Minister and other Ministers shall be collectively responsible to the Legislative Assembly of the State, the Prime Minister shall be the President of the Council, amendment of section 9, Act XIV of 1996, saying that the Council shall consist the Prime Minister appointed by His Highness and such other Ministers of the State as His Highness may appoint on the advice of the Prime Minister. The Prime Minister and other Ministers shall be collectively responsible to the Legislative Assembly of the State; for the words "The Prime Minister may with the previous sanction of His Highness", the words "The Council may" shall be substituted; the Legislature of the State shall consist of His Highness and a House to be known as the Legislative Assembly; notwithstanding anything contained in this Act, the powers of the Legislative Assembly under this Act shall, until other provision is made by or in accordance with a law made by the Constituent Assembly set up under the Proclamation 1951, be exercisable by the said Constituent Assembly and references in this Act to the Legislative Assembly shall be construed accordingly, the Legislative Assembly may make rules and standing orders, subject to the provisions of this Act for regulating their procedure and conduct of their business, until rules are made under sub-section (3), the rules of Procedure and standing orders in force in relation to the Praja Sabha shall apply to the Legislative Assembly, subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly (An Act further to amend the Jammu and Kashmir Constitution Act, 1996, Act No. XVII of 2008. Whereas it is expedient further to amend the Jammu and Kashmir Constitution Act, 1996, with a view to bring it in accord with the spirit of Proclamations dated 5th March, 1948, 20th June, 1949 and 20th April, 1951 and the changes brought about in the actual governance of the State, in the manner hereinafter appearing:

Now, therefore, in exercise of the powers reserved under Section 5 of the J&K Constitution Act, 1996, read with the Proclamation issued by His Highness and published in the Extraordinary issue of the Government Gazette, dated 7th March, 2006, Yuvraj Shree Karan Singh ji Bahadur is pleased to enact as follows:

Short Title and Commencement

(1) This act may be called the Jammu and Kashmir Constitution (Amendment) Act, 2008, Samvat 1951 AD.

(2) It shall come into force at once, Amendment of Section 4, Act XIV of 1996. 2: In Section 4 of the Jammu and Kashmir Constitution Act, 1996 (hereinafter referred to as the 'said act')

for the words "except insofar as may be otherwise provided by or under this Act, or as may be otherwise directed by His Highness", the words "on the advice of the Council except insofar as may be otherwise provided by or under this Act and except in regard to those matters enumerated in List I in the Seventh Schedule to the Constitution of India with respect to which the Parliament of India has power to make law for the State" shall be substituted.

Omission of section 5, Act XIV of 1996, 3: Section 5 of the said Act shall be omitted.

Amendment of section 6, Act XIV of 1996.4: In section 6 of the said Act for the words and figures "Subject always to the provision of sections 4 and 5, subject also to such rules of business and allocation of portfolios and such other directions as to consultations with or reports to and confirmation by His Highness on special matters as His Highness may give from time to time by general or special orders in that behalf", the words "Subject to the Provisions of this Act" shall be substituted.

Substitution of section 7, Act XIV of 1996. 5: For section 7 of the said Act, the following section shall be substituted, namely:

"Constitution of the Council-7. The Council shall consist the Prime Minister appointed by His Highness and such other Ministers of the State as His Highness may appoint on the advice of the Prime Minister. The Prime Minister and other Ministers shall be collectively responsible to the Legislative Assembly of the State. The Prime Minister shall be the President of the Council."

Amendment of section 9, Act XIV of 1996. 6: In section 9 of the said Act, for the words "The Prime Minister may with the previous sanction of His Highness", the words "The Council may" shall be substituted.

Insertion of new sections 9-A and 9-B in Act XIV of 1996. 7: After section 9 of the said Act, the following sections shall be inserted, namely:

Appointment of Deputy Ministers - 9-A:

1. His Highness may, on the advice of the Prime Minister, appoint Deputy Ministers to work in such Ministries as the Council may consider necessary.

2. The Deputy Ministers shall be selected from amongst the members of the Legislative Assembly.
3. The Deputy Ministers before entering on the duties of the office shall take an oath of office before the Prime Minister in the form set out in Schedule I.

Salaries of Ministers and Deputy Ministers - 9-B:

1. The salaries and allowances of Ministers shall be such as the Legislative Assembly may from time to time by Act determine and until the Legislative Assembly so determines, Ministers shall draw such salaries and allowances as they were drawing immediately before the commencement of the Legislative Assembly.
2. The salaries and allowances of Deputy Ministers shall be such as may be determined by the Legislative Assembly from time to time and until the Legislative Assembly so determines, the salaries and allowances of Deputy Ministers shall be as set out in Schedule II.
3. Amendment of section 10, Act XIV of 1996.
8. After subsection (3) of section 10 of the said Act, the following sub-section shall be added, namely:
4. The Council may make rules not inconsistent with this Act in regard to the duties of the Advocate General.

Omission of section 12, Act XIV of 1996.

9. Section 12 of the said Act shall be omitted.

Substitution of words "Legislative Assembly" for the words "Praja Sabha" in part III, Act XIV of 1996.

10. In Part III of the said Act, for the words "Praja Sabha" wherever they occur, the words "Legislative Assembly" shall be substituted.

Substitution of section 13, Act XIV of 1996.

11: For section 13 of the said Act, the following section shall be substituted, namely:

"Legislature: 13

1. The Legislature of the State shall consist of His Highness and a House to be known as the Legislative Assembly.
2. Notwithstanding anything contained in this Act, the powers of the Legislative Assembly under this Act shall,

until other provision is made by or in accordance with a law made by the Constituent Assembly set up under the Proclamation dated 20th April, 1951, be exercisable by the said Constituent Assembly and references in this Act to the Legislative Assembly shall be construed accordingly.

3. The Legislative Assembly may make rules and standing orders, subject to the provisions of this Act for regulating their procedure and conduct of their business.
4. Until rules are made under sub-section (3), the rules of Procedure and standing orders in force in relation to the Praja Sabha shall apply to the Legislative Assembly, subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly."

Omission of section 14, Act XIV of 1996.

12. Section 14 of the said Act shall be omitted.

Substitution of section 15, Act XIV of 1996.

13. For section 15 of the said Act, the following section shall be substituted, namely:

"Summoning of the Legislative Assembly: 15

1. The Legislative Assembly shall be summoned to meet at least twice in a year and more than six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.
2. Subject to the Provisions of this section, the Speaker of the Legislative Assembly may from time to time:
   (a) summon the Legislative Assembly to meet at such time and place as he thinks fit;
   (b) prorogue the Legislative Assembly."

Amendment of section 16, Act XIV of 1996.

14. In section 16 of the said Act.

(i) In clause (b) the words "or any other Minister" shall be omitted, and

(ii) In clause (c) for the words "the President" the words, "the Speaker" shall be substituted.

Amendment of section 17, Act XIV of 1996.

15. In section 17 of the said Act, for the words "Flue President" the words "the Speaker" shall be substituted.

Substitution of section 19, Act XIV of 1996.

16. For section 19 of the said Act, the following section shall be substituted, namely:

"Speaker and Deputy Speaker: 19.

(1) The Legislative Assembly may choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and so often as the office of the Speaker or Deputy Speaker becomes vacant, the Assembly may choose another member to be the Speaker or the Deputy Speaker, as the case may be.

Until the Legislative Assembly elects a Speaker and Deputy Speaker, as provided in sub-section (1), the President of the Constituent Assembly shall act as Speaker and Deputy Speaker of the Legislative Assembly."

Amendment of section 20, Act XIV of 1966.17: In section 20 of the said Act:

(i) sub-section (1) shall be omitted;

(ii) sub-section A shall be renumbered as sub-section (i) and in the sub-section as so renumbered.

(a) for the words "Deputy President" the words "Deputy Speaker" and for the words "the President", wherever they occur, the words "the Speaker" shall be substituted, and

(b) the words "with the approval of the Council" shall be omitted; and

(iii) for sub-section (3), the following sub-section shall be substituted, namely:

"(2) During the temporary absence of else Speaker and the Deputy Speaker from a meeting of the Legislative Assembly such person shall act a Speaker as may be determined by the Rules of Procedure of the Legislative Assembly or if no such person is present such other person as may be determined by the Assembly".

Amendment of Section 21, Act XIV of 1996.

19. In Section 21 of the said Act, for the words "Deputy President" the words "the Speaker or the Deputy Speaker" shall be substituted.

Substitution of section 22, Act XIV of 1996. 19: For section 22 of the said Act, the following section shall be substituted, namely:

"Parliamentary Secretaries: 22.

(1) The Council may appoint from among the members of the Legislative Assembly as many Parliamentary Secretaries for such period and on such terms and conditions as the Council may think fit.

(2) The Council may make rules not inconsistent with the provisions of this Act in regard to the duties of Parliamentary Secretaries".

Substitution of section 23, Act XIV of 1996.

20. For section 23 of the said Act, the following section shall be substituted, namely:

"Legislative power of the Legislative Assembly-23, Subject to the provisions of the Act, the Legislative Assembly may make laws for the whole or any part of the State and for the State subjects, wherever they may be, except in regard to those matters enumerated in List I in the seventh Schedule to the Constitution of India with respect to which the Parliament of India has power to make laws for the State."

Omission of section 24, Act XIV of 1996.

21. Section 24 of the said Act shall be omitted.

Amendment of section 25, Act XIV of 1996.

22. In Section 25 of the said Act:

(i) in sub-section (l) for the word "President", the word "Speaker" shall be substituted, and

(ii) in sub-section (3) for the words "one-fifth", wherever they occur, the words "one-fourth" shall be substituted.

Omission of Sections 26, 27 and 28, Act XIV of 1996.

23. Sections 26, 27 and 28 of the said Act shall be omitted.

Substitution of section 30, Act, XIV of 1996.

24. For Section 30 of the said Act, the following section shall be substituted, namely:

"Allowances and Salaries: 30. The Speaker, the Deputy Speaker and the members of the Legislative Assembly shall receive such salaries and allowances as may be determined by an act of the Legislative Assembly and until that Act is passed, such salaries and allowances shall be as set out in Schedule III."

Amendment of section 31, Act XIV of 1996.

25. In sub-section (3) of section 31 of the said Act, for the words "In English" the words "both in Urdu and English shall be substituted.

Amendment of section 32, Act XIV of 1966.

26. In section 32 of the said Act, the proviso shall be omitted.

Substitution of section 38, Act XIV of 1996.

28. For section 38 of the said Act, the following section shall be substituted, namely:

"Expenditure charged on the revenues of the State—43

The following expenditure shall be the expenditure charged on the revenues of the State:

(a) Allowances of His Highness and other expenditure relating to his office;

(b) Debt charges for which the State is liable including interest, sinking fund charges and redemption charges and other expenditure relating to the raising of loans and service redemption of debt;

(c) Salaries, allowances and pensions payable to or in respect of the Judges of the High Court and the Members of His Highness Board of Judicial Advisers;

(d) Expenditure relating to Constituent Assembly and its staff;

(e) Any sums required to satisfy and judgement decree or award of any court or arbitral tribunal;

(f) Any other expenditure declared by this Act or any Act of the Legislative Assembly to be so charged."

Amendment of section 45, Act XIV of 1996.

32. In Section 45 of the said Act;

(i) at the end of sub-section (1) fullstop shall be deleted, and the following words shall be added, namely: "but nothing in this sub-section shall be construed as preventing the discussion in the Legislative Assembly of any of these estimates."

(ii) Provisions to sub-section (2) shall be omitted.

Substitution of section 46, Act XIV of 1996.

33. For section 46 of the said Act, the following section shall be substituted, namely: "Supplementary Expenditure-46: If in respect of any financial year a further expenditure from the revenues of the State becomes necessary over and above the expenditure authorised for that year, the Council shall have the power to authorise that expenditure. A statement of the Legislative Assembly along with the financial statement for the following year and the provisions of the preceding sections shall have effect in relation to that statement of the expenditure as they have in relation to the annual financial statement."

Amendment of section 48, Act XIV of 1996.

34. In sub-section (b) of section 48 of the said Act for the words' one or more Judges" the words, "two or more other Judges" shall be substituted. Amendment section 49, Act XIV of 1996.

35. In section 49 of the said Act, for the figures "55", the word "Sixty" shall be substituted and the first proviso shall be omitted. Amendment of section 51, Act XIV of 1996.

36. In section 51 of the said Act for the words "British India" wherever they occur, the word "India" shall be substituted. Substitution of section 72, Act XIV of 1996.

37. For section 72 of the said Act, the following section shall be substituted, namely: "Prerogative-72. Nothing in this Act shall derogate from the prerogative of His Highness to grant pardons reprieves, respites of remissions of punishment."

Amendment of section 75, Act XIV of 1996.

38. In section 75 of the said Act, the words "Subject to the provisions of Section 5" shall be omitted.

Omission of sections 77 and 78, Act XIV of 1996.

39. Sections 77 and 78 of the said Act shall be omitted.)

So, the Constituent Assembly was the Legislative Assembly of J&K and as Constituent Assembly, its role was over after the Constitution was framed. Thereafter wherever the reference Constituent Assembly appeared, it can be taken as represented by the Legislative Assembly. So, nothing contained in the Constitution of J&K as well as Constitution of India becomes irrevocable after the Constituent assembly finished its job of framing the Constitution of J&K since, during the period till 1956, it had also worked as the Legislative Assembly.

The Constituent Assembly passed different resolutions in the process of framing the democratic constitution and some of the resolutions of the Constituent Assembly were accepted by the Regent and the Jammu and Kashmir Constitution Act, 1996 Samvat (1939 AD) was also accordingly amended at times. It was on 20th August, 1952 that the Constituent Assembly passed a resolution to name the head of State, Constitution and Legislature as an elected Sadar-e-Riyasat and the Regent on behalf of the Maharaja amended the Jammu and Kashmir Constitution, 1996 Act of 1996 Samvat w.e.f. 17th November, 1952 AD, incorporating that Head of the State shall be designated as Sadar-e-Riyasat and the qualifications and authority of the Sadar-e-Riyasat was also defined. The words 'His Highness' wherever appeared were replaced by Sadar-e-Riyasat. The Constituent Assembly elected the Yuvraj as the Sadar-e-Riyasat in November 1952. This brought to end the 106-year-old hereditary rule in Jammu and Kashmir. It was laid down that Election and term of office of the Sadar-e-Riyasat and all other matters pertaining to the office of the Sadar-e-Riyasat shall be regulated in accordance with the Resolution of the Constituent Assembly dated the 21st of August, 1952:

(i) like that the Head of the State shall be the person recognised by the President of the Union on the recommendations of the Legislative Assembly of the State;

(ii) he shall hold office during the pleasure of the President; that the Head of the State shall be designated as the Sadar-e-Riyasat; that the Sadar-e-Riyasat shall exercise such powers and perform such functions as may be prescribed in the Constitution to be framed by this Constituent Assembly, and until such Constitution is framed, he shall exercise such powers and perform such functions as have hitherto been exercised by His Highness under the Jammu and Kashmir Constitution Act, 1996, as amended by Act No. XVII of 2008:

(Resolution of the Constituent Assembly pertaining to the Head of the State, 1952: Fourth Session, 20th August, 1952. RESOLUTION:

Whereas this Assembly adopted the recommendations contained in the Interim Report of the Basic Principles Committee presented on the 10th of June, 1952;

And whereas by its resolution, dated the 12th June, 1952, this Assembly directed that the recommendations so adopted be implemented and, for that purpose, charged the Drafting Committee to submit appropriate proposals;

Now, therefore, in pursuance of the resolution dated the 12th of June, 1952, and having considered the report of the Drafting Committee, this Assembly resolves:

1. (i) that the Head of the State shall be the person recognised by the President of the Union on the recommendations of the Legislative Assembly of the State;

(ii) he shall hold office during the pleasure of the President;

(iii) he may, by Writing under his hand, addressed to President, resign his office;

subject to the foregoing provisions, the Head of the State shall hold office for a term of five years from the date he enters upon his office.

Provided that he shall, notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office;

that the recommendation of Legislative Assembly of the State in respect of the recognition of the Head of the State specified in sub-pare (i) of paragraph 1 shall be made by election; that the method of election to, qualifications for and all other matters pertaining to the office of the Head of the State shall be prescribed, in the Constitution, and until these are so prescribed, shall be as set out in the rules contained in the schedule annexed to this resolution;

…….4. that the Head of the State shall be designated as the Sadar-e-Riyasat; 5. that the Sadar-e-Riyasat shall be entitled to such emoluments, allowances and privileges as may be prescribed in the Constitution and pending the framing of the Constitution to such emoluments, allowances and privileges as may be decided by this Assembly by separate resolution; 6. that the Sadar-e-Riyasat shall exercise such powers and perform such functions as may be prescribed in the Constitution to be framed by this Constituent Assembly, and until such Constitution is framed, he shall exercise such powers and perform such functions as have hitherto been exercised by His Highness under the Jammu and Kashmir Constitution Act, 1996, as amended by Act No. XVII of 2008; (1996 less 57 - 1939 AD 2008 less 57 - 1951 AD). 7. that in the event of the occurrence of a casual vacancy in the office of the Sadar-e-Riyasat by reason of his death, resignation or otherwise, the powers and functions exercisable by the Sadar-e-Riyasat shall until the assumption of office by the newly elected Sadar-e-Riyasat in accordance with the procedure laid down in this resolution, be exercised and performed by the person recommended by the State Government for recognition as Officiating Sadar-e-Riyasat to the President of India; and 8. that this Assembly shall, in due course, provide a suitable remedy in respect of violation of the Constitution or gross misconduct by the person for the time being, holding the office of the Sadar-e-Riyasat. This Assembly further resolves that the Prime Minister of Jammu and Kashmir State is authorised to communicate a copy of this resolution to the Government of India for favour of appropriate action to enable its being given effect to.)

Amendment of section 66, Act XIV of 1996....In section 66 of the said Act, for the words "the commands of His Highness", the words "orders of the Sadar-e-Riyasat" were substituted and for the words "His Highness", where they occur for the second time, the words "the Sadar-e-Riyasat" shall be substituted. The Prime Ministers of the State shall communicate the name of the person duly elected by the Assembly as the Sadar-e-Riyasat to the President of India for being recognised as the Sadar-e-Riyasat. All rights, authority and Jurisdiction which pertain or are incidental to the Government of the territories of the State of Jammu and Kashmir shall be exercisable by the Sadar-e-Riyasat on the advice of the Council except insofar as may be otherwise provided by or under this Act, and except in regard to those matters enumerated in List in the Seventh Schedule to the Constitution of India with respect to which the Parliament of India has power to make laws for the State. For the words "Prerogative of His Highness" the words "Powers of the Sadar-e-Riyasat", shall be substituted.

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Constituent Assembly of J&K and Ratification of Accession

Proclamation directing the formation of State Constituent Assembly was issued on 1st May, 1951 by Regent Yuvraj Karan Singh. In 1951, the State Constituent Assembly was elected by the people. The Assembly met for the first time in Srinagar on 31st October, 1951 with Maulana Masoodi in Chair and all 75 members elected out of NC candidates. The Constituent Assembly elected the Yuvraj as the Sadar-e-Riyasat on 15th November, 1952. This brought to end the 106-year-old hereditary rule in Jammu and Kashmir. The State Constituent Assembly ratified the accession of the State to the Union of India on 6th February, 1954. The President of India subsequently issued the Constitution (Application to J&K) Order 14th May, 1954 under Article 370 of the Indian Constitution extending the Union Constitution to the State with some exceptions and modifications.

The State's own Constitution came into force on 26th January, 1957 under which the elections to the State Legislative Assembly were held for the first time on the basis of adult franchise the same year. Section 3 of the Constitution says, "The State of Jammu and Kashmir is and shall be an integral part of the Union of India." Section 4 of the Constitution defined the territories which on the fifteenth day of August, 1947, were under the sovereignty of suzerainty of the Ruler of the State."

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Better Only Go by the Recorded/ Approved Actions

The UN had failed to make the aggressor Pakistan leave the occupied areas of J&K even after the 6 years of India flied a complaint in UN Security Council.

Although as per the Instrument of Accession, 1947 signed by the Maharaja, there was no need for the endorsement of accession by the people of J&K but as was laid down by Mountbatten in his letter dated 27th October, 1947 the controversy had erupted to the advantage of the anti-India parties, although Pakistan had at no time questioned the exclusive right of Maharaja Hari Singh/Prince of Princely State for exceeding to a dominion or not. It was on 6th February, 1954 that the elected Constituent Assembly of J&K (that was also working as Legislative Assembly) unanimously ratified and expressed full faith in the 26th October, 1947 Accession executed by the Prince of J&K with India.

The Jammu and Kashmir Constitution, 1996 (Amendment) Act, 2011 Sanvat 1954 AD was amended by Sadar-e-Riyasat, w.e.f. 14th May, 1954 also in a way endorsing the acceptance of Presidential Constitution (Application to Jammu and Kashmir) Order, 1954 of 14th May, 1954.

There are enough reasons that could be argued for delay in the finalisation of J&K Constitution and the controversies regarding the continuation of Article 370 of the Indian Constitution or J&K having a constitution within the Indian Constitution. Some may attribute the reason to the manner Delhi handled J&K affairs extending extra and undue attentions to likings or dislikings of Sheikh Mohammed Abdullah and ignoring the rights of the Maharaja of J&K or Regent. But let us only go by the recorded and approved actions.

Much talked Delhi Agreement had no constitutional validity. It was only an agreement between Jawahar Lal Nehru and Sheikh Abdullah. But since its references have been reflected in the proceeding of J&K Constituent Assembly as well as the orders and letters of Sadar-e-Riyasat and Ministers of his government, the quotes being made by National Conference or persons like Saghir Ahmed 5th Chairman of working group on J&K appointed by the Prime Minister, Manmohan Singh in 2006 cannot be brushed aside.

The official records of the Sadar-e-Riyasat do even indicate that Sheikh Abdullah was himself not enthusiastic to implement the so-called 1952 Delhi accord. A Joint Memorandum was submitted by Cabinet colleagues of Sheikh Abdullah on 8th August, 1953 to J&K PM alleging that: in the course of the meeting of the Cabinet, held on 7th August, 1953, and on many other occasions previously, they had brought to his notice certain pronounced tendencies indicating a very sharp divergence of opinion had become manifest in their approach to the broad policies .... Mr. Beg and he, in utter disregard of the opinion of his colleagues and without their consultation, make public pronouncements which flout to principle of joint responsibility...... That he (Sheikh) frequently adopted certain arbitrary measures complete/denial of the right of expression of opinion of even his own colleagues in the handling both of external and internal affairs of the State.... regretfully observing that Sheikh only disregarded the wishes of his colleagues in the Cabinet but acted in the Legislative Assembly also in a manner which denied the right of freely expressing their opinions to the representatives of the people in regard to the basic policies ......he had consistently refused to acknowledge responsibilities that devolve on him as the Prime Minister of the State by not following the declared policies that form the basis of the Government.... Sheikh had tended to act in a manner that had generated uncertainty, suspense and doubt in the minds of the people of the State in general and of those in Jammu and Ladakh in particular... and even when the united will of the people stood solidly behind this act of Kashmir's accession to India, while accepting our request, the Government of India assured us of the right of self-determination for our people... after the convening of the Constituent Assembly, certain inescapable elaborations of the State's relationship with India were defined in the Delhi Agreement, of which Sheikh was the Chief Architect on their behalf, Sheikh's stand was unanimously endorsed by the Government, the National Conference, the Indian Parliament and the Constituent Assembly of the State, but he had not only deliberately delayed implementation of the agreements on these matters which formed the sheet-anchor of their policy, but had purposefully and openly denounced these in public... alleging that Sheikh had thus arbitrarily sought to precipitate a rupture in the relationship of the State with India. This speaks enough. It has been only the personal ambitions of the leadership that has hence kept the affairs of J&K in turmoil all these years. Those who have eye on the power appear to be bent upon not allowing the environment to truthfully calm down in J&K.

(Joint Memorandum submitted by Cabinet Members of the Sheikh Abdullah Ministry to Sheikh Abdullah, copy to the Sadar-e-Riyasat, 8th August, 1953.)

You will kindly recall that, in the course of the meeting of the Cabinet, held on 7th August, 1953, and on many other occasions previously, we brought to your notice that certain pronounced tendencies indicating a very sharp divergence of opinion had become manifest in our approach to the broad policies, which form the basis of the Government and the administration. Contrary to the normal practice of a uniform policy in the conduct of the administration, it has become increasingly clear that Mr. Beg and you, in utter disregard of the opinion of your colleagues and without their consultation, make public pronouncements which flout to principle of joint responsibility. Since the formation of the present Government, in spite of the constant endeavour of your colleagues to secure maximum agreement and unity in the formation and execution of essential policies in accordance with the mandate given by the people, you have frequently adopted certain arbitrary measures complete denial of the right of expression of opinion of even your own colleagues in the handling both of external and internal affairs of the State.

Most of these measures and policies have been self-contradictory and inconsistent, leading to serious complications. After the establishment of the Legislative Assembly, we have expected that our joint responsibility and collective functioning as a Cabinet would be governed by well-established parliamentary practices. But we regret to observe that you have not only disregarded the wishes of your colleagues in the Cabinet but have acted in the Legislative Assembly also in a manner which denied the right of freely expressing their opinions to the representatives of the people in regard to the basic policies pursued by the Government. In the past, even though occasions have arisen when we seriously opposed certain measures which affected the efficient and smooth functioning of the administration, we refrained from bringing matter to a head by making concession to your views in the interests of securing harmony and concord in the working of the Government. Unfortunately, however, this spirit of accommodation has been misconstrued by you and you have consequently adopted an attitude which is far from democratic and indicates a tendency towards making arbitrary use of power and position. Your attitude with regard to the political and economic policies of the Government has given rise to a great deal of confusion in the public mind and serious dislocation in economic life of large sections of the people. For quite some time, now, a factional tendency has been evident in the Cabinet, which has been responsible for a progressive deterioration in the administration. Consequently, various ameliorative measures proposed by the members of the Cabinet in good faith have not been implemented honestly. Above all, there has been a singular failure to exercise vigilance and proper supervision in the day-to-day functioning of the administration which has produced corruption, nepotism, inefficiency and wanton wastage of public resources in most sphere of Government activity. All these facts of omission and commission have inevitably created large-scale discontent in various part of the State.

All along, the Government has lacked a sense of uniformity and direction in its plans and programmes. Time and again, we have brought to your notice the imperative need of arresting this process of deterioration in the administration. We attempted to represent the feelings of various sections of the people and urgent necessity of undertaking immediate measures for the amelioration of these conditions. But we regret to say that you not only disregarded all our opinions in this respect, but have been ignored the recommendations of the Wazir Committee, which had been set up by the Government to inquire into a number of grievances of the people.

Consequently, the political uncertainty has been accentuated with the result that our economy has been thrown into stagnation, which has impoverished large masses of people, when the tourist traffic showed healthy improvement last year, and this year, you destroyed public confidence through your irresponsible utterances.

The events of the last few months have, in particular, thrown the state in the midst of a severe crisis. The repercussions of this crisis are bound to be serious and far-reaching. We regret to state that you, as the head of the Government, have not only failed to take note of the situation but have, by your words and deeds, accentuated the tension. You have consistently refused to acknowledge responsibilities that devolve on you as the Prime Minister of the State by not following the declared policies that form the basis of the Government. You have tended to act in a manner that has generated uncertainty, suspense and doubt in the minds of the people of the State in general and of those in Jammu and Ladakh in particular. All these factors have combined to strengthen the disruptionist forces seeking the disintegration of the State.

As is well-known, the unprovoked aggression from Pakistan had put our very national existence at stake. In that critical hour of crisis, all of us jointly approached India for help and requested her to accept the accession of the State and assist us in repelling the aggression and restoring peaceful conditions in the State. The united will of the people stood solidly behind this act of Kashmir's accession to India. While accepting our request, the Government of India assured us of the right of self-determination for our people. After the convening of the Constituent Assembly, certain inescapable elaborations of the State's relationship with India were defined in the Delhi Agreement, of which you were the Chief Architect on our behalf. Your stand was unanimously endorsed by the Government, the National Conference, the Indian Parliament and the Constituent Assembly of the State. But you have not only deliberately delayed implementation of the agreements on these matters which form the sheet-anchor of our policy, but have purposefully and openly denounced these in public. You have thus arbitrarily sought to precipitate a rupture in the relationship of the State with India. Though it is true that the people of the State have the ultimate right to decide their future, the conditions of chaos and confusion, which are being engineered today by you, are bound to be fatal for the exercise of the right of self-determination by our people. Under these circumstances, what seems inevitable is that interested foreign powers may well take advantage of, and exploit the situation for, their own selfish purpose. Mr. M.A. Beg has persistently been following policies of narrow sectarianism, and communalism, which have seriously undermined the oneness of the State. Unfortunately, you have been lending your support to his policies in the Cabinet and his activities in public. This has generated bitter feelings of suspicion and doubt in the minds of the people of various constituent units of the State. You have connived at all these unfortunate happenings and thus strengthened and encouraged the forces of disruption. The result is that unity and the secular character, the two fundamental aspects of our State, stand threatened today.

We have been constantly urging upon you to put an end to these unhealthy tendencies and to undertake unitedly measures for restoring the moral of the people. In spite of our best intentions, we have failed in our efforts.

It is, therefore, with great pain that we have to inform you of our conclusion that the Cabinet, constituted as it is at present and lacking as it does the unity of purpose and action, has lost the confidence of the people in its ability to give them a clean, efficient and healthy administration.)

The Constituent Assembly of J&K was an elected body and Yuvraj Karan Singh was the Regent as well as Maharaja's representative. Any actions, commands, approvals and consents conveyed to the Government of India for any amendments in the relationships beyond the instrument of accession, extension of provisions of the Indian Constitution to J&K, J&K Constitution from 1950 to 1954, from 1954 to 1957, and after 1957, were backed by legal and democratic authorities. The Constituent Assembly of J&K was the Legislative Assembly as well and, hence, from 1957 onwards, the Constituent Assembly seized to exist by the name Constituent Assembly and continued as Legislative Assembly, to be elected as per the provision laid in the Constitution of J&K effective from 26th January 1957.

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Constitution of J&K is to legislate on a "Shadow State List"

It can also be said that the way in the Indian Constitution (1950) the subjects for other Indian States under Article 246 were classified as those in Union list, Concurrent list and State list. For explanation sake, J&K State has different State and Union lists were drawn out and looking into the intricacies of the issues the procedures and guidelines were laid in Article 370 of the Constitution of India. Jammu and Kashmir Constitution as extension of Constitution of India for drafting subjects in the "Shadow State List" for "Jammu & Kashmir Constitution, so that those who hold the reins of governance in times to come are checked from going astray. I am saying so for a common man. However, one could contest this explanation since the term 'Constitution' has been used. The same way subjects of "dual citizenship" restricted employment in government service, restriction on raising physical assets in J&K need be handled with cool mind. Even before the Constitution of J&K was written, the first Prime Minister of India, Jawahar Lal Nehru had drawn out an agreement with Sheikh Abdullah in 1952. Some parts of same agreement reflected in the spirit of some Sections of Jammu and Kashmir Constitution like the PRC (Permanent Resident Certificate holder of Jammu and Kashmir, State Flag, Sadar-e-Riyasat etc). But the people of other Indian States (except from Jan Sangharsh/Shiv Sena/Bharatiya Janata Party) never questioned their leaders for such provisions at the appropriate time, whereas it was needed to do so.

Article 35A (1954) was incorporated in the Indian Constitution through a Constitutional order even much before the Constitution of J&K came into existence (1956-1957). It is under the provisions of Article 35A that the J&K Assembly can incorporate provisions that could discriminate the people of other Indian States, violating many provisions of the Union Constitution, which prohibits the discrimination amongst the Indian citizens. Section-8 and Section-9 of the J&K Constitution could be quoted in this reference.

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Article 370 of the Constitution of India

Manmohan Singh, the then Prime Minister of India, had appointed five working groups on J&K on 25th May, 2006, at the end of the second multi-party Round Table Conference at Srinagar. The report of the 5th working group had added another leaf to the bunch of confusions and uncertainties, although the Group was headed by Justice Saghir Ahmed, a retired Judge of the Supreme Court of India. Justice Saghir Ahmed's report was another example of the non-serious approach demonstrated by the Government of India, that the Government has been holding all these years controversies about Article 370 of the Constitution of India and the turmoil in J&K. While the questions and doubts have remained unaddressed like always, a competition has been going on amongst the local Kashmiri leaders to show ultimate oneness with the people of the Kashmir Valley. Even the mainstream Kashmiri leadership sees more profits in raising fingers at Delhi, due to which leaders with separatists' ideologies and openly challenging the Accession of J&K with India have, hence, found it easier for them to survive. The mainstream leadership does not want to lose the rights and opportunities for sharing power and, hence, do not in plain words question the 1947 Accession of J&K with India. The National Conference had secured larger grounds in J&K inheriting the Sheikh Abdulla's "hierarchy", accusing Delhi of eroding the Autonomy granted to J&K by the Indian Constitution and so demanding restoration of Autonomy but without raising any fingers on the truthfulness of 1947 Accession. PDP, the other regional party, aspiring to share power seats, had to compete with the National Conference. It had to move ahead of the National Conference. So, very carefully PDP talked of Self Rule and released a concept paper on 25th October, 2008.

In the recent years, the RTCs, Working Groups, interlocutors and study groups have only concentrated more on the Kashmir valley. Any official group visiting from Delhi is keen to meet the separatist elements, who do not even show minimum respect and interest, whereas those who hail from the Jammu and Ladakh regions are always ignored by the groups and interlocutors on J&K. (This is due to the preliminary inputs they receive from Delhi before they start work on ground. Manmohan Singh, the Prime Minister of India, had appointed five working groups on J&K in 2006. On 25th May, 2006, at the end of the second multi-party RTC at Srinagar. The first and third RTCs were held by the Indian PM in New Delhi on 25th February, 2006 and 25th April, 2007.) One of the working groups, 5th Working Group, strengthening relations between the state and the centre, was headed by Justice S. Saghir Ahmed (Ex-Chief Justice of J&K HC & Andhra Pradesh HC and Retd. Judge of the Supreme Court of India). *In the first meeting of the WG held on 12th December, 2006, the Chairman made it clear that the WG was not concerned with the dispute between India and Pakistan pertaining to the State of J&K* and therefore, WG would confine itself to the consideration of the questions relating to Centre-State relations within the framework of the Constitution of India. So, in view of the terms of reference, the subjects before the WG were like Autonomy (NC demand), Self-Rule (JK PDP demand) and abrogation of Article 370 (as demanded by BJP and many other parties). The WG report was signed by the Chairman on 18th December 2009 and report was presented at Jammu to J&K CM, Omar Abdullah on 23rd December, 2009 by the Secretary of the Group, Mr. Ajit Kumar.

So, strangely the WG report did not particularly dispose off the Autonomy Demand as per the J&K Assembly Autonomy Resolution, June 2000 in even minimum specific terms. The report said:

(i) Article 370 of the Constitution of India: The matter being 60 years old should be settled once and for all. On page 10, para 3 of the report, a reference of the Supreme Court case of Sampath Prakash has been made from the submission made by PDP through MH Baig before the WG. But the report still made casual remarks on Article 370.

(ii) The report in the summary recommendations says that the autonomy demand could be examined in the light of Kashmir Accord (what was this Kashmir accord was not spelled by the Judge) or, in some other manner, or on the basis of some other formula as the present Prime Minister may deem fit and appropriate so as to restore the autonomy to the extent possible. Here the question is why did the Chairman, who has been an Ex-Justice, also not examine at his level and make specific recommendations. He left the issue still open after spending 3 years.

(iii) *As regards PDP demand of Self-Rule at para 3 of the Summary recommendations, the report says that, on behalf of PDP, Mr. Baig explained orally the concept of Self-Rule but the Self-Rule as proposed by PDP could not be considered in all its detail as the document containing the various aspects of Self-Rule were not provided to WG as promised by PDP. PDP had by that time released concept of Self-Rule Document on 25th October, 2008 in the Press Conference at Srinagar and posted on its website also.*

The question is that still why the WG report did not drop the demand of Self-Rule and instead laid down that it requires to be considered by Central Government if and when approached (by PDP) with documents. *The Document released by PDP had sufficient contents that concern the Accession 1947, Indo-Pak relations, POK and the report should have made its observations on the demand being conceptually within the scope of terms of reference or within the Indian Constitution or otherwise.* But the WG took it so casually. Justice Saghir Ahmed's report is a very good latest example of continuous non-seriousness towards the J&K affairs at the prime levels. Strangely, the 5th working group report presented by Justice Saghir Ahmed did not make any reference of PDP's Self-Rule Concept paper, nor did PDP question the 5th Working Group report that claimed to be not aware of PDP Self-Rule concept paper, although PDP had released the same on 25th October, 2008.

So, Article 370 debates have to be ended once and for all and the Government of India as well as Indian leadership will have to address all doubts and questions raised by people even if they do not have any technical base since repeated wrongs if not addressed too can be taken as facts.

Article 370 was incorporated in the Constitution of India with particular reference to Jammu and Kashmir. No other Princely State that acceded to India in 1947 by executing the same standard instrument of accession was referred to in this way in the Constitution of India that came into force on 26th January, 1950. To be brief even after the commencement of the Constitution of India, Union List comprising of subjects covering Foreign affairs, Defence, Communications and allied matters was applicable to the State of Jammu and Kashmir and other subjects which we may call J&K specific States list to be extended to the President of India as per the procedures laid in Article 370 of the Constitution of India were retained. And it was left to the Assembly or Constituent Assembly of J&K to endorse additional subjects in the State of J&K regarding the remaining Union List as well as also draft the procedures and Constitution of J&K to be followed by the J&K Legislature and the Government of J&K for operating the State-specific or general State List and allied matters. In a way, simply for logic sake, it could be alleged or inferred by some that the Status of the British Crown as regards the Princely State of Jammu and Kashmir was replaced by the Dominion of India for immediate operation. Yes, may be there are still some people in J&K, who have grievance against Nehru or Congress for putting the people of J&K in illusions or still keeping J&K like a Colony, earlier it was of the British and now it is of India under Article 370 some may allege. All may not question like this, but those who would, surely may appear convincing at the first sight. I would not discuss the reasons or objectives behind this except saying that if the people of India did not ask their leaders for this mess or delay in working out arrangement as was done for most of the States by 26th January, 1950, then why should the People of J&K raise question on Article 370.

Controversies regarding Article 370 have damaged even the socio-communal fabric of J&K. A seminar specifically on the need for abrogation of Article 370 was organised by Bharatiya Janata Yuva Morcha on 13th June, 1992 at Jammu. The then BJP National Vice-President Mr. Sikander Bakht also attended the seminar. All the speakers advocated for the abrogation of Article 370. Sikandar Bakht appreciated the pains taken by the speakers to win opinions for abrogation. But he also opined that in spite of the "logics" given for abrogation, the reasonings have all along failed to carry along the masses of India. Sikandar Bakht opined that it is not only the Kashmiri Muslims who think that such demands are anti-Muslim but the people in other states too think that demand for abrogation of Article 370 is anti-Muslim. Mr. Bakht added that those who occasionally rise only to oppose abrogation have so far succeeded. *The Article lays a special treatment for only J&K State and not for Muslims outside J&K. Some "experts of Kashmir affairs" advocate its retention and a few even ask for Article 370 like provision to more states (though such number may be very less/microscopic).*

Mr. L.K. Advani had said on 5th October, 1997 in Calcutta (44th death anniversary of Dr. Shyama Prasad Mookerjee) that:

"Shyama Prasad Mookerjee was an epitome of national unity and he died in prison, strongly advocating scrapping of the government's dual policy towards Kashmir."

Further adding that BJP would launch a mass agitation for repeal of Article 370 of the Constitution of India, Mr. Atal Behari Vajpayee too had talked on 21st December, 1997 for a national debate on Article 370 while speaking at the three days National Executive Meet of BJP at Bhubaneswar. Repeal of this Article was retained in the 1998 election manifesto of BJP. Dr. Farooq, while addressing an election rally at Marh (Jammu) on 13th

February, 1998 said that Article 370 cannot be scrapped even if all MPs in the Parliament belong to one party and claimed that Atal Behari Vajpayee had privately admitted that this Article cannot be scrapped. PTI had reported on 11th February, 1998 that as per a press release of a private network, Dr. Farooq Abdullah had cautioned against such moves and had gone to the extent of saying that he would lead the revolt. And Mr. Kedar Nath Sawhney then had said on 13th February, 1998 while at Jammu that if the J&K Chief Minister claims that a revolt may occur in the country with the abrogation of Article 370 and the country will not be able to control it, then he will be the biggest fool. Many challenges and claims could be listed from 1997 through to date. But India has celebrated many republic days thereafter with Article 370 still in place.

The situation is so bad that even the national level Indian political parties want to ride on the chariot of "Article 370 Controversies". Many even in India have started thinking that defending this article is defending Muslim cause and abrogation of this article is anti-Muslim. So, why keep this issue a feeding ground for the politicians? Let all the Indians know well about it. People of India should force the rival parties to change the discussions from "closed door seminars" or debates to open seminars. No doubt, such issues could better be addressed in seminars and not in public debates.

Broadly, people from three schools of thought participate in discussions on Abrogation of Article 370.

Category (1) are those who advocate its abrogation pleading that since J&K is an integral part of India, it is an Indian State. They argue that constitutional provision of a Separate State Flag and emblem for Jammu and Kashmir have provided enough of tools to those who advocate against J&K remaining a State of Bharat/separatists.

Category (2) are those who advocate for the abrogation because they believe that this article has so far been misused by those who have remained at the helm of J&K affairs to benefit their own self and their kins by using it as a tool to exploit the local sentiments of, particularly, the innocent Kashmiri muslims.

Category (3) are those who plead that its retention is in the interest of the people of J&K as a whole.

It was on 31st January, 1992 that I first called for an open National Seminar, discussing all the Pros and Cons on Article 370 for making concensus through a column in the leading paper of Jammu and Kashmir. Call was repeated year after year. But all kept cooking in their own "kitchens". While making the call, I had drawn attention to some other allied issues also that required careful and truthful considerations for carrying the process of bringing peace and normalcy in Jammu and Kashmir. The following reference points still hold good today and should be answered:

(1) Why did Maharaja Hari Singh not accede to Union of India on or before 14th August, 1947?

(2) Was there any commitment with Maharaja Hari Singh of the type of the contents of Article 370 of the Indian Constitution?

(3) Did Hari Singh do some rethinking at the eleventh hour? Was he under the influence of some local advisors (may be from the Jammu Province) on the subject?

(4) Was the text of instrument of accession for J&K different than that was for other acceding princely states?

(5) Did Sheikh Abdullah before 14th August, 1947 any time advocates independent Kashmir or J&K?

(6) Was there any other political group in J&K (August 1947) comparable to the National Conference in the Jammu Province?

(7) What did the then leadership from the Jammu province and that of Ladakh look at?

(8) Was J&K part of any country other than Bharat in the past?

(9) Do we really need a 'bridge' like Article 370 between India and J&K?

(10) Why was INC not active in J&K in the forties?

(11) Why did Lord Mountbatten, the then Governor

General of India, while accepting the Instrument of accession on 27th October, 1947 say "It is my Government's wish that as soon as law and order have been restored in Kashmir and its soil cleared of invaders, the question of the State's accession should be settled by a reference to the people."

(12) Had Pandit Nehru made any personal commitment to Sheikh Abdullah?
(13) Why did the Government of India not manage abrogation of "temporary" Article 370 even upto 1975?
(14) How did Pandit Nehru look at the need for the incorporation of Article 370?
(15) Why has the Delhi agreement remained a nearly concealed document till this day?
(16) Can J&K still be constitutionally like other Indian States?
(17) Are the contents of this article drawn out carefully?
(18) Has Article 370 outlived its utility?
(19) Should this article be modified or is there no alternative than to abrogate it? How could it be abrogated without giving a chance to a politician to exploit a Muslim or a Kashmiri Muslim?
(20) Do we need to rewrite/recast the Constitution of J&K?
(21) Will the Parliament of India forever remain helplessly looking towards the Legislature of J&K?
(22) Are the people of J&K not 'azaad' (independent) yet? If yes, then why was not the then Prime Minister of India, Mr. Narasimha Rao questioned for offering something short of Azaadi to the people of J&K?
(23) What difference will it make to the people of India in case J&K is given something like Autonomy Resolution that was passed by J&K Legislature in 2000?
(24) Common people in other Indian States have not agitated against J&K having her own Constitution. Then why oppose issues like the resolution as passed by J&K assembly on Autonomy? Only BJP has raised some questions.

(25) How well are the people of the other Indian states informed about J&K?

(26) In case J&K has to have her own Constitution and her own Flag, then what is the harm in limiting the accession only to the subjects as were mentioned in the instrument of accession?

(27) What is the simple definition of the National Conference's Greater Autonomy?

(28) What is the harm or benefit in "Autonomy"?

(29) With J&K having her own constitution and two flags fluttering on equal masts, can the world still acknowledge J&K as India?

(30) Section (3) of the J&K State Constitution states that J&K is and shall remain an integral part of the Union of India. Why do some say that abrogation of this Article shall delink J&K from India?

(31) Are only Kashmiri leaders more in favour of this Article? If so, why?

The concept of abrogation of this article has to be carried, particularly the people of the Kashmir valley, both technically and conceptually. Simple technicalities would not do in case India looks for long-term peace.

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Article 370 of the Constitution of India – A Temporary Provision

Indian Constitution and the J&K State have often remained the subjects for discussions and debates. So much so that it is a common man's belief that the Indian State of J&K has a separate Constitution. But it cannot be overlooked that the "Separate" Constitution under reference has been given by the Constitution of India. So, when the Indian Constitution is the mother of J&K Constitution, how could J&K have a separate Constitution? Some people name Article 370 as the root cause of controversies over J&K being equal to all other States of India like Bihar, Panjab, etc. Many believe that now Article 370 does not have much importance since it is through this Article that many provisions of the Indian Constitution, many laws/Acts of the Indian Parliament been extended to J&K. Many have become part of the J&K Constitution or some restrictive provisions of the J&K Constitution are now very much in conformity with the Constitution of India, so debates on Article 370 should now come to an end. Rather the people, who made such provisions and made some controversial commitments in 1947 to 1950s, should have been questioned or their "heirs" need be asked to accept the responsibility.

It will not be fair to simply question and reject those people for whom such provisions have been laid and if these beneficiaries still want to hold fast to the Article 370; they cannot be forced to shed their "special" rights, rather they shall have to be sociopolitically convinced for coming out of the mindset of "special" provisions. They will have to be convincingly told about the negative aspects, if any, of such provisions in case it has to be removed democratically.

But today, it is a bitter reality that this so-called special Constitutional relationship of J&K with India has also proved as a breeding ground for those who are against J&K as an integral part of India, or who raise questions on the Constitutional Status of J&K. It also poses a threat to peace in J&K with the passage of time. The number of those questioning Indian intentions has grown. Rather it appears that Delhi has not taken the issues that seriously over the last 65 Years, not even after 1990.

Even some political leaders, that do hold fast to 1947 Accession of J&K with India no doubt but still believes that J&K should retain her "own Constitution" and "own Flag", accuse India of unduly extending some provisions of the Indian Constitution to J&K and demand that laws that have been extended to J&K before 1957 or thereafter must be reversed. Many amongst them have remained part of governments in J&K and they and their parties have consented constitutionally according to the provisions of Article 370 in and outside J&K legislature for extension or adoption of the Articles or Acts or Provisions that are now being dragged into controversies. It cannot be overlooked that the way some of these people have been accusing India of eroding the autonomy of J&K as well as breaching upon the trust that the "Kashmiri" had rested on India has gone to the advantage of those who question the truth of the October 1947 Accession of J&K with India. So, due to this, the separatists are so encouraged that when invited by Delhi, they plainly challenge the 1947 accession and they reject the offer. Had it not been so, the separatists would not have been so particularly drawing the first attentions of Delhi, so plainly challenging the 1947 accession and rejecting the offers for talks from the Governments; expressing so boldly and freely anti-India views in seminars, rallies and press conferences even outside the Kashmir Valley.

Article 370 of the Indian Constitution is not a special status provision as regards J&K, but it is a temporary provision with respect to the State of Jammu and Kashmir. This Article is temporary and has to go. The word 'temporary' very lucidly conveys that those who drafted and accepted the Constitution of India made this provision hoping that the state of uncertainty and negotiations would end soon. Such message also flows from Article 370(3) where it is said that: Notwithstanding anything in the foregoing provisions of this Article, the President may, by public notification, declare that this Article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification:

Since no constituent assembly has to stay permanently and hence, using the term 'Constituent Assembly' here indicates that Article 370 had to stay in its first form for a shorter period. Some people do argue that Article 370 cannot be abrogated since now there is no Constituent Assembly. For argument sake, even this logic can be brushed aside since the J&K Constituent Assembly was also named as the Legislative Assembly under the Constitution of J&K 1996 amended in 2008 Samvat (discussed in detail in earlier chapters). So, the Legislative Assembly can perform the function in case need arises. Article 368 of the Indian Constitution talks of the procedures for amending the Constitution, may be it could be of some help.

In the earlier times, the people of other Indian states too did not that seriously care for J&K affairs. Now, with the passage of time, it may not be that easy to clear doubts in the minds of common man, particularly in the Kashmir Valley, simply by addressing only to the technicalities.

The facts and truths about the intentions of Delhi shall have to be carried to the common man to clear the confusions created by the separatists over the years; even to undo the concepts that have been cultivated by some "mainstream" Indian leaders, who believe that J&K is different than the other Indian States.

In the same way, the Constitution (Application to Jammu and Kashmir) Presidential order of 14th May, 1954 too could be seen as foundation for the J&K Constitution. So, someone could say why should any Indian, who is the Permanent Resident of J&K, forego any special rights that the Indian Constitution extends to him. In case the people who are not for retention of Article 370 or J&K holding separate Constitution attend to these aspects seriously. They may not succeed in motivating those Indians in J&K, who are not ready to shed their "special" provision. There has been surely one disadvantage of Article 370 and that is that some people have been using Article 370 as a symbol of separatism for wooing the innocent people away from Bharat. Otherwise also it would be in the overall interest of those who want to check those who have been and are promoting the separatist ideologies in the name of separate Flag and Constitution.

Text of Articles of the Indian Constitution under reference:

1. Part xxi of the Constitution of India: Temporary provisions with respect to the State of Jammu and Kashmir.

Article 370: (1) Notwithstanding anything in this Constitution—

(a) the provisions of Article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of the Parliament to make laws for the said State shall be limited to—(i) those matters in the Union List and the Concurrent List, which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and (ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify. Explanation—For the purposes of this Article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

(c) the provisions of Article 1 and of this Article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify: Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State: Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government. (2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon. (3) Notwithstanding anything in the foregoing provisions of this Article, the President may, by public notification, declare that this Article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

2. AMENDMENT OF THE CONSTITUTION

368. Power of Parliament to amend the Constitution and procedure therefor.-- (1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give

his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in—

(a) article 54, article 55, article 73, article 162 or article 241, or

(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

(3) Nothing in article 13 shall apply to any amendment made under this article.

[(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any court on any ground.

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.]

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'J&K is an Integral Part of India' says Section 3 of the Constitution. Where does PDP Self-Rule Stand?

J&K People Democratic Party is regarded as a mainstream regional party of India. Like the resolution was passed in J&K Assembly on 25th June, 2000 accepting the State Autonomy Committee Report, similarly the PDP's Self-Rule demand or proposals were released by party in 2008. Since PDP has remained in power along with Congress from 2002 to 2008, it has gathered importance worth discussing. There were still probabilities of Congress joining hands with PDP again as PDP had gained more grounds in the Kashmir Valley as compared to the Congress Party.

PDP's SELF-RULE document:

(i) Calls the Pakistan Occupied Kashmir (POK) as Pakistan Administered Kashmir (PAK).

(ii) Self-Rule Document suggests that J&K issue cannot be resolved on the basis of exclusively intra-state level initiatives.

(iii) It suggests creating a new system of "Dual Currency" where the Indian and Pakistani rupees both are made legitimate legal tenders in the geographical areas within Greater Jammu and Kashmir (GJAK).

(iv) It says Self-rule refers to autonomy from the "Nation-state" of India, whereas autonomy (NC's demand of

Autonomy) connotes relative autonomy from the Government of India.

(v) Suggests two UNITS of Greater Jammu and Kashmir doing trade independently with India, Pakistan and other world and the like. This way J&K PDP headed by Mufti Mohammed Sayeed (Ex-Union Home Minister) in its Self-Rule Concept paper has asked something like joint control of India and Pakistan over some affairs of J&K well knowing that it is not possible without undoing 1947 accession with India. It has attempted to take lead over National Conference by pleading and advocating anti-accession like remedies in the guise of a "mainstream "Indian political party.

A new leaf was added to the Self-Rule concept by PDP MLA, Nizamuddin Bhatt. The request of PDP MLA, that was rejected on 15th September, 2011, by the J&K Assembly Speaker, Mohammed Akbar Lone, was for deletion/amendment of (i) Section-147 (b) (ii) Section-3 and (iii) Section-5 of the J&K Constitution. Section-3 defines the relationship of J&K with the Union of India. It says that "the State of Jammu and Kashmir is and shall be an integral part of the Union of India". Otherwise also the said resolution was sure to be rejected by the speaker (PDP MLA also knew this well) since Section 147 of the J&K Constitution lays down that no bill or amendment seeking to make any change in the provisions of Section 147, Section 3 and Section 5 shall be introduced or moved in the either house of the legislature. The action of the PDP MLA, it appeared, was more aimed at sending a symbolic message as regards his not believing in J&K continuing as India.

Article 1 of the Constitution of India defines the territories of India, that is, Bharat and the Jammu and Kashmir State is in the territory of Bharat. Similarly, anyone, who is the Citizen of India can only be the Permanent Resident of J&K. One has to be first Citizen of India, then can he/she be the PRC or State Subject of Jammu and Kashmir. Section (6) of J&K Constitution very specifically lays down that (1) Every person who is, or is deemed to be, a citizen of India under the provisions of the Constitution of India shall be a permanent resident of the State, if on the fourteenth day of May, 1954 (a) he was a State subject of class I or of class II; or (b) having lawfully acquired immovable property in the State....

So, anyone who disowns his self as citizen of India, loses his right as the Permanent Resident of J&K as well. This message has to be carried deep. The demands like Self-Rule do not fit anywhere within the Constitution of India as well as the Constitution of J&K. So, no time should be lost by Delhi in making its stands clear on different subjects in public, otherwise the common masses would be misleading further.

Articles that must be viewed in this regard:

1. {Name and territory of the Union. Admission or establishment of new States. Formation of new States and alteration of areas, boundaries or names of the existing States:

1. (1) India, that is Bharat, shall be a Union of States.

1[(2) The States and the territories thereof shall be as specified in the First Schedule.]

(3) The territory of India shall comprise— (a) the territories of the States; 2[(b) the Union territories specified in the First Schedule; and] (c) such other territories as may be acquired}. So, no citizen of India has right for challenging the integrity of India.

2. Section (6) of the J&K Constitution very specifically lays down that:

(l) Every person, who is, or is deemed to be, a citizen of India under the provisions of the Constitution of India, shall be a permanent resident of the State, if on the fourteenth day of May, 1954: (a) he was a State subject of class I or of class II;

or (b) having lawfully acquired immovable property in the State, he has been ordinarily resident in the State for not less than ten years prior to that date.

(2) Any person who, before the fourteenth day of May, 1954 was a State subject of Class I or of Class II and who, having migrated after the first day of March, 1947, to the territory - now included in Pakistan, returns to the State under a permit for resettlement in the State or for permanent return issued by

or under the authority of any law made by the State Legislature shall, on such return, be a permanent resident of the State.

(3) In this section, the expression "State subject of Class I or of Class II" shall have the same meaning as the State Notification No. I-L/84 dated the twentieth of April, '1927, read with State Notification No. 13/L dated the twenty-seventh of June, 1932.}. 3. {Article 2.. Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit. 4. {Article 3. Parliament may by law— (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State; (b) increase the area of any State; (c) diminish the area of any State; (d) alter the boundaries of any State; (e) alter the name of any State: 4 [Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred to by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired}.

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The Delhi Agreement, 1952

An agreement was drawn between New Delhi and J&K leadership (to be specific, Sheikh Mohammed Abdullah, the then appointed Prime Minister of J&K State) in 1952, commonly understood as the Delhi Agreement. People generally call it an agreement between Jawahar Lal Nehru and Sheikh Abdullah. Some even say that it was a document prepared through which Jawahar Lal Nehru wanted to make the desires of Sheikh Abdullah all compulsions for anyone in Chair, who followed after Nehru. A very simple question could be raised by anyone who has no bias. The question is: When Article 370 was already in place w.e.f. from 26th January, 1950, what was the need of the Delhi Agreement in August 1952? Here again I would ask whether Jawahar Lal Nehru and his cabinet was superior to the Constitution of India or the Parliament of India or the Constituent Assembly of Jammu and Kashmir {that started her proceedings on 31st October 1951}. No doubt, it is asserted that the agreement was discussed in the Union Parliament on 7th August, 1952 and was accepted by using the brute majority of Congress even after sharp opposition from the Opposition Leaders. The Jammu and Kashmir Constituent Assembly discussed the arrangement and finally adopted a motion of approach on 21st August, 1952. How funny the J&K Constituent Assembly adopted a motion of acceptance after the Parliament. It could be said that the Delhi Agreement was the will of Sheikh Mohammed Abdullah, endorsed by Jawahar Lal, but Sheikh still feared that the Constituent Assembly of J&K may not surrender fully before his desires and, hence, the Delhi Agreement was also discussed in the Parliament before the Constituent assembly had it. Otherwise there was no need for this. Moreover, in case the Constituent Assembly had finalised all its Policy and Draft Articles, sections of the State Constitution, then why did it take five more years to accept and put in force the State Constitution. It is also alleged that Sheikh Mohammed Abdullah was working on some network of plans woven around his own personal ambitions or serving his interest. He feared that the democratic assemblies and governments in the coming days may force him to enter into competitive power games, that he could not afford. So, Sheikh Abdullah, though was in favour of the Indian state, he wanted to make his position unquestionably sure, he might have used the bundle of mistakes done by Jawahar Lal Nehru before and like statements at the time of acceptance of 1947 Accession as well as filing complaint in UN Security Council against Pakistan on 1st January, 1948, in pressurising Jawahar Lal Nehru.

Regarding to the Delhi Agreement, Sheikh Mohammed Abdullah, the then Prime Minister of Jammu and Kashmir, had earlier stated "the main consideration before our Government was to secure a position for the State, which would be consistent with the requirements of maximum autonomy for the local organs of the State power, which are the ultimate source of authority in the State while discharging obligations as a Unit of the federation".

Later on, the difference appeared in the Sheikh's Cabinet itself. The difference of opinion reached a peak when Sheikh Abdullah, instead of implementing the agreement, allegedly started advocating something like ultimate distancing from the other States of the Union. The people of the State were quick to perceive the danger of such a course as they had already seen the tribal attack in 1947 that had caused devastations as a direct consequence of Kashmir's isolated position. There were even rumours that United States was prompting Kashmir's independence". *Events thereafter point that Sheikh Abdullah was accused both by his colleagues in the Cabinet and people of trying to* *create a State for himself. In fact, it was said that three members of his Cabinet had submitted a memorandum to Sheikh Abdullah labelling accusations/charges on him*. The whole matter was spotlighted when Bakshi Ghulam Mohammed {Dy PM in Sheikh's cabinet} took over as the Prime Minister of Jammu and Kashmir on 9th August, 1953 after Sadar-e-Riyasat reacted on the prevailing situations and dismissed Sheikh Abdullah from the post of Prime Minister of Kashmir on 8th August, 1953 and dissolved the Cabinet. {The Delhi Agreement as quoted at places mentioned: The representatives of the Kashmir Government conferred with the representatives of the Indian Government and arrived at an agreement in order to endorse the main decisions of the Constituent Assembly of the State of J&K. This arrangement was later on known as the "Delhi Agreement, 1952". The main features of this agreement were:

(i) in view of the uniform and consistent stand taken up by the Jammu and Kashmir Constituent Assembly that sovereignty in all matters other than those specified in the Instrument of Accession continues to reside in the State, the Government of India agreed that, while the residuary powers of legislature vested in the Centre in respect of all states other than Jammu and Kashmir, in the case of the latter, they vested in the State itself;

(ii) it was agreed between the two Governments that in accordance with Article 5 of the Indian Constitution, persons who have their domicile in Jammu and Kashmir shall be regarded as the citizens of India, but the State legislature was given power to make laws for conferring special rights and privileges on the 'state subjects' in view of the 'State Subject Notifications of 1927 and 1932: the State legislature was also empowered to make laws for the 'State Subjects' who had gone to Pakistan on account of the communal disturbances of 1947, in the event of their return to Kashmir;

(iii) as the President of India commands the same respect in the State as he does in other Units of India, Articles 52 to 62 of the Constitution relating to him should be applicable to the State. It was further agreed that the power to grant reprieves, pardons and remission of sentences, etc.; would also vest in the President of India.

(iv) the Union Government agreed that the State should have its own flag in addition to the Union flag, but it was agreed by the State Government that the State flag would not be a rival of the Union flag; it was also recognised that the Union flag should have the same status and position in Jammu and Kashmir as in the rest of India, but for historical reasons connected with the freedom struggle in the State, the need for continuance of the State flag was recognised.

(v) there was complete agreement with regard to the position of the Sadar-e-Riyasat; though the Sadar-e-Riyasat was to be elected by the State Legislature, he had to be recognised by the President of India before his installation as such; in other Indian States, the Head of the State was appointed by the President and was as such his nominee but the person to be appointed as the Head, had to be a person acceptable to the Government of that State; no person who is not acceptable to the State Government can be thrust on the State as the Head. The difference in the case of Kashmir lies only in the fact that Sadar-e-Riyasat will in the first place be elected by the State legislature itself instead of being a nominee of the Government and the President of India. With regard to the powers and functions of the Sadar-e-Riyasat, the following argument was mutually agreed upon:

(a) the Head of the State shall be a person recognised by the President of the Union on the recommendations of the Legislature of the State;

(b) he shall hold office during the pleasure of the President;

(c) he may, by writing under his hand addressed to the President, resign his office;

(d) subject to the foregoing provisions, the Head of the State shall hold office for a term of five years from the date he enters upon his office;

(e) provided that he shall, notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office.

(vi) with regard to the fundamental rights, some basic principles agreed between the parties were enunciated; it was accepted that the people of the State were to have fundamental rights. But in view of the peculiar position in which the State was placed, the whole chapter relating to 'Fundamental Rights' of the Indian Constitution could not be made applicable to the State, the question which remained to be determined was whether the chapter on fundamental rights should form a part of the State Constitution or the Constitution of India as applicable to the State;

(vii) with regard to the jurisdiction of the Supreme Court of India, it was accepted that for the time being, owing to the existence of the Board of Judicial Advisers in the State, which was the highest judicial authority in the State, the Supreme Court should have only appellate jurisdiction;

(viii) there was a great deal of discussion with regard to the "Emergency Powers"; the Government of India insisted on the application of Article 352, empowering the President to proclaim a general emergency in the State; the State Government argued that in the exercise of its powers over defence (Item 1 on the Union List), in the event of war or external aggression, the Government of India would have full authority to take steps and proclaim emergency but the State delegation was, however, averse to the President exercising the power to proclaim a general emergency on account of internal disturbance. In order to meet the viewpoint

> of the State's delegation, the Government of India agreed to the modification of Article 352 in its application to Kashmir by the addition of the following words: "*but in regard to internal disturbance at the request or with the concurrence of the Government of the State.*" At the end of clause (1), both the parties agreed that the application of Article 356, dealing with suspension of the State Constitution and 360, dealing with financial emergency, was not necessary.

I do not find any reasoning worth logic that Jawahar Lal Nehru could carry. Although this Agreement had no constitutional sanction since as it has not been disowned by Congress-run governments in Delhi and some spirit of the text also reflects in the draft of Constitution of J&K, the implications it has created over the years, as and when referred, cannot be simply brushed aside and Nehru's heir apparent must satisfy the people.

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Indira-Sheikh Accord, 1974

Known as 'Kashmir Accord', it was signed on 13th November, 1974 between the then Prime Minister, Indira Gandhi and Sheikh Mohammed Abdullah (in what capacity is not officially made public). At the maximum, this could be called an agreement between Sheikh Abdullah and Indira Gandhi or maximum Congress (I). The Congress party made way for Sheikh Abdullah to become the CM of J&K with the support of Congress in February 1975 when Sayeed Mir Qasim stepped down on his own. The accord said: The Content of the Accord are worth reproduction here:

1. The State of Jammu and Kashmir, which is a constituent unit of the Union of India, shall, in its relation with the Union, continue to be governed by Article 370 of the Constitution of India.
2. The residuary powers of legislation shall remain with the State; however, Parliament will continue to have power to make laws relating to the prevention of activities directed towards disclaiming, questioning, disrupting the sovereignty and territorial integrity of India or bringing about secession of a part of the territory of India from the Union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution.
3. Where any provision of the Constitution of India had been applied to the State of Jammu and Kashmir with adaptations and modifications, such adaptations and

modifications can be altered or repealed by an order of the President under Article 370, each individual proposal in this behalf being considered on its merits, but provisions of the Constitution of India already applied to the State of Jammu and Kashmir without adaptation or modification are unalterable.

4. With a view to assuring freedom to the State of Jammu and Kashmir to have its own legislation on matters like welfare measures, cultural matters, social security, personal law, and procedural laws, in a manner suited to the special conditions in the State, it is agreed that the State can review the laws made by the Parliament or extended to the State after 1953 on any matter relatable to the Concurrent List and may decide which of them, in its opinion, needs amendment or repeal. Thereafter, appropriate steps may be taken under Article 254 of the Constitution of India. The grant of President's assent to such legislation would be sympathetically considered. The same approach would be adopted in regard to the laws made by the Parliament in future under the Proviso to clause 2 of the Article. The Government shall be consulted regarding application of any such law to the State and the views of the State Government shall receive the fullest consideration.
5. As an arrangement reciprocal to what has been provided under Article 368, a suitable modification of that Article as applied to the State should be made by the Presidential order to the effect that no law made by the legislature of the State of Jammu and Kashmir, seeking to make any change in or in the effect of any provision of the Constitution of the State of Jammu and Kashmir relating to any of the undermentioned matters, shall take effect unless the bill, having been reserved for the consideration of the President, receives his assent; the matters are:

(a) the appointment, powers, functions, duties, privileges and immunities of the Governor, and

(b) the following matters relating to Elections, namely the superintendence, direction and control of Elections by the Election Commission of India, eligibility for inclusion in the electoral rolls without discrimination, adult suffrage and composition of the legislative Council, being matters specified in Sections 138, 139, 140 and 50 of the Constitution of the State of Jammu and Kashmir.

No agreement was possible on the question of nomenclature of the Governor and the Chief Minister and matter is, therefore, remitted to the Principals.

After Sheikh became the CM, a committee was constituted for reviewing the laws extended to the State after 1953 and it was inferred that no such correction/ repealing/ medication was necessary and no extensions made till then were bad in intentions/ result. Further, one would ask had Indira Gandhi taken any mandate from the Parliament for signing an agreement with an individual of Jammu and Kashmir. Did she take into confidence the people of J&K, some of whom had been till then under the impression that Sheikh was dislodged in 1953 for an Act something like sedition. Similar type commitments had been made by Jawahar Lal Nehru with Sheikh Mohammed Abdullah as claimed in 1947 and stated with regard to 1952 Delhi Agreement. How could anyone make agreements at the personal level involving matters of national and international significance with individuals has never been asked by the people of India. But for all this, it is the people of Jammu and Kashmir from all the three major regions (Jammu, Ladakh and the Kashmir Valley) who have paid price and are paying even today. Similarly, questions could be raised on the wisdom of the legislators who were in the J&K Assembly in June 2000 when a resolution on the Autonomy was passed without commenting on the Status of Indira-Sheikh Accord of 1974 that had been consigned to files after a review exercise. Such questions need to be answered to enable the common man of J&K making up his mind as regards the needs and affairs of J&K. It is also the duty of New Delhi in their interest to reach the people to re-establish the truthfulness of New Delhi.

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If the Constitution of J&K is Legal, the Amendments cannot be Alleged as Illegal Erosion

The Constitution of J&K was drawn out by the Constituent Assembly of J&K duly elected by the people of J&K. The people of J&K well knew that the Maharaja of J&K acceded with India on 26th October, 1947 and the Constitution to be drawn out has to be within the scope of the Indian Dominion.

The people voted for the candidates jointly put up by National Conference and Congress under the banner of the National Conference. Had the Maharaja, Regent, Yuvraj Karan Singh of J&K and the Government of India been not that fair, it would not have been possible for the National Conference to secure all 75 seats. (It is a fact that Sheikh Abdullah was installed as the Prime Minister of the interim government by Maharaja Hari Singh not out of fair choice of the Maharaja.) Similarly, the claims as decided in the Delhi Agreement between Nehru and Sheikh stood well accommodated in the Indian Constitution after 1950 and well incorporated in the J&K Constitution, 1957. It is this Constitution that is alleged as having been eroded unduly by New Delhi by those who are demanding Autonomy and ask for the implementation of the 25th June, 2000 resolution accepting the J&K Autonomy Committee Report. The Autonomy Committee Report (1999) has nowhere quoted any unlawful extension or adaptation of the provisions and Article of Constitution of India to J&K and in J&K Constitution. All the provisions that have been extended to J&K have been extended by concurrence or consultation with the Government of J&K State as defined and provided within the provisions of Article 370 of the Constitution of India and the Constitution of J&K. So, in case the Constitution of J&K is a legal identity framed by an elected Constituent Assembly and accepted by the Sadar-e-Riyasat, how could anyone name the adaptations, amendments or extensions of the Constitution of India beyond the immediate subjects surrendered by Maharaja to the Dominion of India, in terms of the Instrument of Accession 1947). It was accepted by the same constituent assembly, legislative assembly or the State Government defined under the Constitution of J&K (J&K Constitution, 1996 Samvat and J&K Constitution, 1957 AD)? Even the amendments in the designation of the head of state (Sadar-e-Riyasat to the Governor) and the process of appointment of Governor have not been unilaterally enforced by the Government of India but have been unanimously adopted, amended and incorporated by the State Legislature. In 1974, Congress and Sheikh Abdullah entered into an accord and Congress selected Sheikh Abdullah to head the Congress-led government based on numbers in the Legislative Assembly. Sheikh Abdullah did not revive National Conference till the Congress withdrew support from him (1977 elections). But before that Sheikh had accepted the extensions of provisions of the Indian constitution to J&K like other Indian States were not forced ones as well as not detrimental to the interests of the common man of J&K. No doubt, some thorns in the name of the designation of the Governor and the Chief Minister were left undisposed that had no otherwise effect to the interests of the common man of J&K. May be these prickly knots were kept in the accord for a bit of face saving. Thereafter, regular elections have been held in J&K. Whosoever comes in power, appreciates the election process as the fairest and those who lose, accuse Delhi.

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Valley-centric Approach: Muslim Majority Areas of Jammu too Suffer

Valley-centric leaders are involved in internal competition for votes. The voices of dissent against New Delhi all these years have come from 15,948 sq. km. area of the Kashmir Valley. This is only 16% of the present State and 7% of the State at the time of accession. No serious efforts have been made by those who have the political power. Delhi too has only focussed at the Kashmir Valley. Ironically, the doubts and confusions about accession and India have been cultivated in the Kashmir Valley only. The valley-based leadership has, over the years, created an environment where the vote could be secured more easily by accusing Delhi for its unfair treatment towards Kashmiries all these years. This has helped the separatist ideologies to flourish in the Kashmir Valley. *The so-called mainstream political parties are now finding more internal competition in the race for votes and have made their way towards areas falling outside the Kashmir Valley. The religious affinities are also being used. In recent times, they have secured some successes also and some people have started assessing that the Muslim majority areas of J&K outside the Kashmir Valley could prefer to go with the Valley and, hence, the solution to J&K turmoil will remain valley-centric. This assessment does not have much force and the valley-centric demands can still be addressed to by fixing the valley problems there only.*

So, the message has to be carried to the people of India and the world community that when the constitution of J&K had been accepted by those who raise voice of erosion about the Constitution or Autonomy of J&K, they have no accurate logic to reject the provisions of the Constitution of India adopted by J&K with the consent of the Legislature or State Governments under the same Constitution of J&K. The personal promises, statements and relationship cannot be read outside what has been finally written in the Constitution.

Indications are there that the J&K State may see a new phase of transition in times ahead. All these years, the political leadership that has been ruling in New Delhi remained occupied with the Kashmir {Valley}-centric approach.

Even during the times of Maharaja Hari Singh, all the areas of Doda/Rajouri/Poonch/Banihal were kept with the Jammu Province due to socio-geographical priorities. Even Delhi has all along talked of development in the name of Kashmir or Kashmiri, employment prospects in the name of Kashmiri youth and so on. Programmes and statements made by the Prime Ministers and other Indian leaders at different times have been making more reference to Kashmir and Kashmiri people than it would refer to people of J&K as a whole. When Ghulam Nabi Azad took over as the Chief Minister in 2005, people of Jammu carried him on top as a CM from Jammu. But even Mr. Ghulam Nabi Azad remained so much under pressure from the prevailing Kashmir-centric political culture that he kept on making indirect efforts to even prove that he was more a Kashmiri. He often referred that he has been the student of S.P. College, Srinagar; he rarely made any reference to the institution he studied in the Jammu region. He even at occasions referred that his elders belonged to the Kashmir Valley. It is a bitter truth that even when BJP was in power in New Delhi, it had the same approach like Congress of the past years as regards to the Kashmir affairs. And surely over and above all these years, since 1947, all other political parties of India too had kept the Kashmiriat and people of the Kashmir Valley in a very special slot over other people of the J&K State as well as people of other Indian states. It is a hard fact and a bitter truth. It could also be said that this was due to the political circumstances' compulsions since 1946. Even Maharaja Hari Singh had to face neglect at the hands of Delhi simply to accommodate undue demands and proposal of Sheikh Mohammed Abdullah. Only by keeping all this in mind, one can value the political compulsions of Ghulam Nabi Azad of the Congress Party. Due to the political compulsions, the anti-India activities and elements had been allowed to comfortably survive in the Kashmir Valley even after 1989. Anyone who talked of Jammu, making reference to the Jammu Province, have been misquoted as referring to the Jammu city or maximum Jammu District of J&K. This way even the people of districts other than the Jammu district of the Jammu province or region too remained in illusion.

A Commission under Justice J.N. Wazir was formed on 12th November, 1981 for studying different issues including rationalisation of Administrative Units (Districts). After exhaustive study, interaction and factual position, Wazir Commission submitted its report on January 3, 1984. The Commission recommended creation of three more districts in the Jammu region to be carved out one each from the existing Jammu, Doda and Udhampur districts; whereas it recommended only one new district {Bandipora out of Baramulla} for the Kashmir region. Wazir Commission appeared to have been under pressure to nearly accept, as legitimate, the additional three districts already created in the Kashmir division by the State Government in early eighties {Pulwama out of the District of Anantnag, Budgam out of the District of Srinagar, and Kupwara out of the District Baramulla}. Even then had the recommendations been accepted, Number of District Administrative units in the Jammu Division would have gone up from six to nine whereas for the Kashmir region from six to only seven in 1984 itself. The Wazir Commission would have surely taken cognizance of area, backwardness, topography, geographical continuity and distribution of population. Areawise (excluding POJK and allied areas), Jammu region has 26,293 sq. km., the Kashmir region 15,948, while Ladakh topping the list with 59,000 sq. kms. When Wazir Commission was on job, road network was nearly 5,000 kms. in Kashmir Division as against less than 3,500 kms. in the Jammu Division. Even the undivided districts of Baramulla, Anantnag and Srinagar were very small in comparison to the district of Doda. The total combined area of Baramulla and Kupwara districts is 6,977 sq. kms. whereas that of the Doda district is 11,691 sq. kms. Even the area of Doda district excluding forest area is 5,843 sq. kms. and that Baramulla-Kupwara combine excluding forest is only 2,639 sq. kms. Area of Kishtwar tehsil of Doda District was 4,550 sq. kms. In general, the developmental plan funds and other allocations are made by the Government taking District Administrative Unit and Community Development Block as the basis. The recommendations of the Wazir Commission if accepted would have made the backward areas of Jammu the Division entitled for more fund allocations in comparison to Kashmir Division on the basis of Districts. As also it would have been difficult for new Delimitation Commission to keep the single member Assembly Segments (MLA seat in Assembly) in the J&K Legislative Assembly for the Jammu Division less than the Kashmir Division. These two major reasons that would tilt the balance towards the Jammu Division may explain reluctance of Kashmir-centric politicians to keep the Wazir Commission report under the carpet for over 22 years. Imagine loss suffered by the Doda, Udhampur and other zones of Jammu region from 1984 to 2006. Those who have kept the Wazir Commission report under the carpet for over 22 years have surely done a great injustice to the people of Jammu. Kishtwar and Bhadarwah Tehsils of the Doda district are the poorest of the poor areas of J&K inspite of the fact that they had the major portion of forest wealth of J&K and at least half as large a tourism potential as the Kashmir valley has.

After mid-1995, the Kashmiri leadership has started pretending to have more love and lust for the people of Rajouri, Doda, upper Udhampur and Poonch Districts, since they have reasonably large population of Muslims. But, so far, the Kashmiri leaders have not succeeded.

The people of Rajouri, Poonch and Doda are economically and educationally most backward. The road infrastructure and the tourism infrastructure is the poorest of the poor in these districts. Districts like Doda, Rajouri, Poonch and Udhampur have enormous potential for commercial tourism that a tourist could so easily plan a stay of 15 days during summer months.

Bhaderwah has been known as mini Kashmir. But nothing has been done to build infrastructure and attracting the tourists to these areas. The local horticulture has been totally neglected. Nobody knows about Apple of Doda/Kishtwar and Poonch Districts. Nobody knows about Walnut of Doda district and other upper reaches of the Jammu region. Mr. A.R. Zargar, the then Agriculture Minister, had disclosed in the J&K Assembly that Kishtwar *Kesar being superior* (saffron) could sell @ Rs. 400 a tola (10.7 gms) as compared to Rs. 250 per tola for Kashmir Kesar being superior. But hardly any tourist visiting J&K may be knowing that Kishtwar Kesar from the Jammu province/region is of good quality. I tried to collect the data on Kesar in 2005 (saffron) production in Kishtwar from Director, Agriculture, Jammu but IT SHOULD NOT SURPRISE THE READERS THAT IT HAS NOT BEEN MADE AVAILABLE TO ME TILL 2013. This I have just quoted to refute the trueness of the affections that some separatist Kashmir Valley leaders are showing for the people of Poonch, Rajouri and Doda districts. Had the Kashmiri leaders true love for the people of these areas outside the Muslim majority Kashmir Valley, then they should have not allowed the economic backwardness of these areas to keep growing over the years. They are only trying to exploit the religious sentiments of Muslims of the Jammu province for the sake of numbers. I doubt they would succeed.

It was in 2006 that Ghulam Nabi Azad led Congress and PDP coalition. J&K Government reorganised the Districts under the garb of Wazir Commission report of 1981 to 1984. Wazir Commission had recommended only one (Bandipore) new district for the Kashmir Valley but the Government ordered four districts Bandipore, Ganderbal, Shopian and Kulgam. And also gave Kishtwar, Reasi, Bahu/Samba and Ramban, four new districts to the Jammu Division where Wazir Commission had already recommended three Kishtwar, Reasi and Bahu/Samba and more districts 22 years earlier. In a way the Jammu region got just 33 percent more than what Wazir Commission recommended for as against the Kashmir Region getting 300% more than what was recommended by Wazir Commission. And, in a nutshell, Kashmir got nine times more than the Jammu region. The Wazir Commission remained on job from 12th November, 1981 to 3rd January, 1984 and took three years to analyse and make recommendations. The previous governments could not assess the genuineness of Wazir Commission Report even in 21 years, but the Ghulam Nabi Azad government could reassess the whole issue in just half-a-year and finally order creation of eight new districts in J&K instead of four districts recommended by Wazir Commission, making districts in the Kashmir Valley again equal to the Jammu division (10 each). I wish to make a point here that inspite of extra economic, administrative and political favours extended to the Kashmir Valley, New Delhi has not been able to win the confidence of people of Kashmir Valley to the extent that there are many who even challenge the 1947 accession of J&K with India.

Some people in the Jammu region have started saying openly that the backwardness, poverty, underdevelopment, unemployment, poor tourist infrastructure and remoteness of people of this region are overlooked and neglected since they have never raised questions on the validity of 1947 accession of J&K with India or accused India of being unfair in holding commitments made with the people of J&K in 1947 and have instead held firmly to the suggestions for oneness with India.

The Jammu region as a whole has been denied its due share of seats (MLAs) in the Legislative Assembly. Here again the Districts like DODA, Kishtwar, Ramban and Udhampur have been put to more disadvantage by the Kashmir-centric rulers with the backing from Delhi. Doda district (now split into Kishtwar, Doda and Ramban in 2006) has on date 4 to 5 seats less in the assembly than its due share. As per the J&K Representation of the People Act of 1957, the seats in the assembly are not to be provided only on the basis of population. J&K Representation of People Act of 1957 suggest five factors for deciding the distribution of MLAs in the assembly. The parameters under Section 4, sub-section 2 are population, geographical compactness, nature of terrain, facilities of communication and like considerations. The factors of geographical compactness, nature of terrain, facilities of Communication are surely more in favour of the districts of Doda, Poonch, Rajouri, Kathua and Udhampur in comparison to districts of Srinagar, Anantnag, Pulwama, Badgam, Kulgam, Ganderbal and Shopian. Since the last delimitation of Assembly Segments was done in 1995 based on 1981 census, I would discuss here only the data of those days (although eight more new districts of Ramban, Kishtwar, Samba, Reasi, Bandipora, Shopian, Ganderbal and Kulgam were ordered in July 2006). As per the Act, area/geographical compactness, the means of communication, nature of terrain are to be given due weightage so that the MLA is more near to his voters. Population as a parameter could contribute not more than 25% of the weightage. To quote area of erstwhile DODA district was 11,691 sq. kms. and population as per 1981 census was 4,25,662 and only 6 seats (MLA) in assembly were allocated. Whereas the Anantnag district had an area of only 3,984 sq. kms. and population of 6,56,351 but seats allocated were 10. Pulwama had an area of only 1,398 sq. kms. and population of 4,04,078 whereas seats allocated were 5. Badgam had an area of only 1,371 sq. kms. and population of 3,67,267 but here too seats allocated were 5. The Srinagar district had an area of 2,226 sq. kms. and population of 7,08,328 but was allocated 10 seats (MLAs). The percentage of area covered by roads in Jammu region was just 18% in 1981, whereas in the Kashmir region, it was 40%. The position for districts like Doda and Udhampur would have been much less than even 18%; whereas the area covered by good roads in the districts like Pulwama, Badgam and Anantnag was surely around 40%.

The J&K Representation of People Act, 1957 was designed in a very very special manner which could well be seen from the contents of clauses a (i) to a (v) of sub-section (2) of Section (4) of this Act. So far an MLA of nearness has been denied to the people of the farflung areas, to people with lesser means of connectivity and those living in the geographically lesser compact areas. Such areas could fall more in districts like Doda, Rajouri and Poonch. In view of the terrains, the MLAs are not able to regularly reach their areas to check the requirements and also to address to the problems. This clearly speaks of the injustice done to even these Muslim-majority districts by the Kashmir-centric Kashmiri leaders. The data and details as would have been available to the K.K. Gupta Delimitation Commission in 1994-95 have been used above.

As on date, a new Delimitation Commission cannot be constituted till 2031 unless a Bill is passed in the J&K Assembly to undo the ban imposed by the 29th Constitutional Amendment to Section 47 of J&K Constitution. This way, after 1947, the local leaders have inflicted a permanent damage on the people of districts like Doda, Rajouri, Poonch, Ramban, Kathua and Reasi. It is a logic that unless the Kashmiri leadership/Government of India would have influenced the intentions of Delimitation Commission, it was not possible that any Delimitation Commission would have done delimitation by totally neglecting the requirements of J&K Representation of the People Act, 1957. The Kashmiri leaders have hence sealed the fate of the people of Doda, Rajouri, Kishtwar, Ramban, Kathua and Reasi in Legislature till 2031 unless the amendment to Section 47 of J&K Constitution by 29th constitutional amendment is undone. Under a fair delimitation, the MLAs for the Jammu region would be 45 to 46 and for the Kashmir region, it would be only 37 to 38, whereas the position at present is the reverse. The seats that would increase for the Jammu region would go more to the purse of Doda, Kishtwar, Udhampur, Kathua, Reasi and Rajouri.

Over and above, the areas falling in the Jammu region have constitutionally more members in JK Legislative Council than the Kashmir region but last delimitation distributed more seats in the Legislative Assembly for the Kashmir region than for the Jammu region. Under Section 50 of J&K Constitution areas falling in the Jammu region are allocated 14 elected members in the Legislative Council (MLC) whereas those in the Kashmir region have been allocated only 12 elected MLCs. Even the first Delimitation Commission constituted under J&K Representation of the People Act of 1957 had not worked truly while deciding the distribution of the seats in the Legislative Assembly. How could anyone justify allocating 42 seats in the assembly to areas of Kashmir region that had only 12 elected seats in the Legislative Council and 32 seats to the areas of the Jammu region) that had 14 elected seats in the Legislative Council. Any fair delimitation would have reversed the distribution. That is the reason for the Kashmir Valley leaders never having been that particular for delimitation of assembly segments every 10 years. On this count also, it is the Muslim majority areas of the Jammu region that have been the losers.

Neglect is not new. Behaviour of Delhi towards these areas was no different in October-November 1947. Mehar Chand Mahajan, the Prime Minister of J&K/Dewan of Maharaja of J&K had written on 18th November, 1947 to S. Baldev Singh, Defence Minister that the situation required personal attention of the Defence Minister. Mahajan also told this in person to Major General Kulwant Singh as well as GOC, Western Command General Carriappa when he visited Jammu. He conveyed to S. Baldev Singh about the collection of very large number of Pathans across the border on the Sialkot side. On 18th November, 1947, for defence of Jammu, there was not even a full battalion of troops available and the road from Jammu to Kathua was within 3 to 4 miles from the border. Mirpur was completely unprotected. The trouble about Mirpur would have been much less had the military moved earlier towards that side. Gilgit had already been lost, province of Ladakh was not by then protected. Mahajan further informed that Kargil was a crucial point, Iskardu, the winter capital of the Ladakh province had only two platoons; Chitralis and Swati may infilterate into Iskardu via Rondu side, so atleast a company or two be sent more to Kargil to strengthen Iskardu garrison.

Mehar Chand Mahajan after returning from Delhi wrote to Nehru on 30th November, 1947 that, on reaching Jammu from Delhi, he has come to know that:

(i) Indian troops had abandoned Kotli.

(ii) Mirpur was abandoned earlier and had been destroyed by enemy.

(iii) Border from Bhimber to Rajouri had been occupied by enemy.

(iv) that enemy was pushing towards Akhnoor.

(v) Poonch area except the Poonch town, district of Mirpur, Muzaffarabad and a part of Jammu district were in enemy possession, and

(vi) only a directive from him (Nehru, Indian PM) could regain the positions. But still many referred areas could not be saved.

The people of Punjabi-speaking Muslim majority areas of Mirpur, Poonch, Bhimber and Rajouri of Jammu province were poor. Some people of these areas had in 1947 times came under the influence of adjoining areas of Rawalpindi, Jhelum and Gujarat. But the Muslim Chiefs/Jagirdars were Rajput converts who had some loyalty to Maharaja Hari Singh. Muzaffarabad too could not be termed as a Kashmiri-speaking area. So, the question could be: why did Sheikh Abdullah not pressurise the Government of India for getting the other areas (mostly Punjabi-speaking) cleared of Pakistani troops or invaders when he was so dear to Jawaharlal Nehru (who had placed the crown of J&K on Sheikh's head)?

In an interview to Doordarshan on 5th April, 2005, Srinagar Lt. (Retd.) S.K. Sinha, Governor of J&K described the then proposed opening of Uri, Muzaffarabad Road as an event of great personal significance to him. He told that he was among the few who witnessed its closure on 14th November, 1947 since orders from Government deprived them of the opportunity to reach Kohalla and Domel. Mr. Sinha informed that in 1947, Kashmir had stood against the Raiders challenging "*Hamlawar khabardar, hum Kashmiri hain tayyaar*".

There are many such things in store to demonstrate the neglect that the people of other regions of Jammu and Kashmir faced over the last 65 years. So, love and care that the Kashmiri leaders are today pretending for the people of Muslim-dominated districts/areas of other regions are no more than exploiting sentiments on religious lines.

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Separatists too Unduly Use Article 370 as a Tool

Time demands that an ultimate debate must take place in the Indian Parliament on the political and constitutional status of the State of J&K. Simple debates and discussions in the media would not settle the questions. Rather, if possible, the media trials of J&K affairs must be stopped now.

Facts like the one that must be kept in view could be that in 1947 the Princely Sate of Hyderabad too was a big princely State that (though symbolic) had also her own currency, own postal stamps, own army as well as her own airlines. Nizam of Hyderabad, Mir Usman Ali Khan had even sent his representative to UN Security Council in August 1948. It was in September 1948 that his army surrendered before Bharat and it was after one year, in November 1949, that the Nizam of Hyderabad had expressed total confidence and acceptance for the future Constitution of India, that was in final stage of drafting at that time. No confusion or dispute was left with Hyderabad. So, the point that emerges for a rational review is that why did the then Jawaharlal Nehru Government treated Sheikh Mohammed Abdullah differently for J&K. What were the compulsions for Nehru? Was there any special interest towards those in power seat in J&K whereas there was no apparent hindrance for a Hyderabad-like total constitutional integration from Maharaja Hari Singh of Jammu & Kashmir or the then Regent, Karan Singh. In case, answer to such questions are explored by Indian

National Congress, it will not be difficult for Delhi to infuse desires for total constitutional integration like other Indian States in the minds and hearts of those people of J&K (particularly the Kashmir Valley) who have so far known themselves as special citizens of India and to push the separatists in far exile.

The other thing that needs to be seriously looked at is that the Constituent Assembly of J&K had ratified in February 1954 the Accession of J&K as construed by Maharaja Hari Singh with India and a formal seal of the people of J&K was put on the accession, then still what was the need or compulsion for keeping a "separate constitution" for J&K is another question that is required to be answered under the present scenario, Since leaders of Delhi Governments have not seriously, logically, honestly and properly attended to the questions raised in the name of special status of J&K or conditional accession of J&K or Kashmir dispute or discussing political solution from time to time over the years, providing enough opportunities and grounds to the separatists as well as valley-based some mainstream leaderships to gather some support both within India as well as at the international levels.

The subjects and jurisdictions of the Center and States have been classified under Article 246 of Indian Constitution (1950) as (1) Union List, (2) State List, and (3) Concurrent List. In case there was some different criteria needed for J&K, then as regards Jammu and Kashmir, different Union and Concurrent lists could be kept instead of keeping different rights or jurisdictions for J&K in the name of a separate Constitution. It is the grant of rights under Indian Constitution to J&K in the name of "J&K Constitution" that has cultivated more of difficulties for India and provided some grounds for use by the separatist elements, or those who accuse Delhi for not honoring the special commitments made by the then the Government of India and Prime Minister with "Kashmirs" in 1947, thereby keeping Kashmir affairs in turmoil.

It could be said for explanation sake that different Union and State lists have been drawn for J&K State through Article 370 and looking into the intricacies of the issues; the procedures and guidelines were laid for drafting in the shape of a document so that those who *hold the reins of governance in times to come are checked from going astray. And this document of procedures and guidelines was given the name of "Constitution". The "Parent" to Article 370 (still named as temporary even after six decades) for J&K is Indian Constitution itself. So, Article 370 or J&K Constitution cannot be seen or conceived in isolation to the Indian Constitution.*

It too could be thought and accepted that in 1950 the political leadership of India (Congress) must be carrying the fatigue of the freedom struggle and, hence, might not have been able to exercise that wise vigil, shrewdness and care for that minute diplomatic details. But, at this stage, the Hindustanis will have to collectively settle for paying the price for the intentional or unintentional mistakes or instead of indulging in controversies and political blame game. No doubt, there is also very much need for proper clarifications/explanations on the time-to-time statements oftenly made regarding Kashmir affairs by the senior Indian leaders like Jawaharlal Nehru, Narasimha Rao, Atal Behari Vajpayee, I.K. Gujral, Manmohan Singh, etc. for the consumption of common man of J&K (particularly those from the Kashmir Valley). Along with fighting the extraterritorial enemies and disruptive elements, Hindustan has to fight simultaneously sociointellectual battles at local levels also.

There is no State list for J&K as on date since even the shades of such classification have been undone formally by the Presidential orders issued in 1963 under provisions of Article 370 of the Indian constitution.

First Constitution (Application to Jammu and Kashmir) Amendment Order was made by the President on 26th January, 1950. After that Jammu Kashmir Constituent Assembly had ratified the Accession of 1947 on 6^th^ February 1954 and put even the extra seal of the mass public opinion on the same. It was after three months that on 14th May, 1954, another order was issued by President under Article 370 in which the spirit of the said 1952 Delhi Agreement clearly emerged. It is also a peg in ground that the J&K MLAs/MLCs, J&K Ministers and J&K Judges take the oath of office in the name of Constitution of J&K. But all this is under the provisions of Constitution of India, so all this could be dealt with constitutionally only as long as the democratic norms prevail.

The J&K Constitution was adopted in 1956/57. In 1952, the then

Indian PM Jawaharlal Nehru had entered into an agreement with Sheikh Mohammed Abdullah, some terms of which later became the part of J&K Constitution like PRC (State Subjects of J&K), separate Flag of J&K. But it can also not be overlooked that the people of other Indian states of India (except JS/SS/BJP) never questioned their leaders for the same, whereas that was the need.

Similarly, Article 35A of the Constitution of India was incorporated much before the J&K Constitution was adopted. This Article legitimises any preferential treatment given to residents of J&K over other Indian citizens by J&K Assembly and Sections 8 and 9 of the J&K Constitution are the outcome of the same.

It is a sure fact that in Section 3 of J&K Constitution, it has been very clearly written that the Jammu and Kashmir State is and will remain an inseparable part of India.

On such like issues, there should be deliberations at the National level in the Lok Sabha and Rajya Sabha. Without this, the constitutional deficiencies or infirmities that emerged due to Delhi in 1950s cannot be so simply removed in a constitutional manner. This would put a check on the anti-India elements too who do otherwise use Article 370 and J&K Constitution for presenting the Kashmir affairs before the innocent common man in their own style.

The Parliament should discuss the political and constitutional status of J&K, it should also discuss Autonomy Resolution, 2000 and PDP Self-Rule as well as suggestions for reorganization of J&K State (needs and technicalities). No doubt, it cannot be still ruled out that the politicians would play number game in the Parliament. One thing is sure that with such like debate in the Parliament, atleast all the political leaders shall have to clearly express and disclose their opinion as regards the trueness of 1947 Accession. Accession-related issues would get some settlements and the viewpoints would be clear. Common man of Kashmir too would get the right directions.

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Myths: Explanations: Claims that Need to be Addressed

Article 370: So often, it is stated by the leaders from almost all the political parties that the Constitution of India recognises the special status of Jammu and Kashmir through Article 370. While Article 370 has not been called special Provision or status Article in the Constitution of India. Instead, it has been called a temporary provision for the time being. Though it appears under Part XXI (TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS) of the Constitution of India, Article 370 has been named temporary provisions with respect to the State of Jammu and Kashmir. It is a fact that Article 371 deals with special status and provisions, and not 370. If this misnomenclature had been contested properly by our mainstream leaders, the separatist, anti-India elements and anti-1947 accession forces would not have been able to misuse of this Article to cultivate their viewpoints.

It is often said that Clause 1(a) of article 370 embodies special provisions for Jammu and Kashmir, Clause 1(b-i) Article 370 exempted the State from the provisions of the Constitution providing for the governance of the States and Clause 1(b-ii) Jammu & Kashmir was allowed to have its own separate constitution. Whereas Article 370 nowhere mentions that the Indian State of Jammu and Kashmir will have a separate new unilateral Constitution of J&K and the State is not exempted from the provisions of the Constitution of India meant for the governance of the Indian States.

*Such opinion holders should rather also have a look into the objective before the Constituent Assembly as has been mentioned in the Preamble: "**we, the people of the state of Jammu and Kashmir, having solemnly resolved, in pursuance of the accession of this State to India which took place on the twenty-sixth day of October, 1947, to further define the existing relationship of the State with the Union of India as an integral part thereof, and to secure to ourselves...**". It is very clear that the roots of the J&K Constitution lie in the Constitution of India and no way J&K has a separate Constitution.*

No doubt, reference of the Constituent Assembly is, therefore, that was for working out the arrangement for dealing with the affairs for the time being outside the "union list" i.e. subjects outside the scope of Central Government as pertained to J&K. No doubt, if other "constitutional" provisions or other Union powers, over rising the state-specific subjects, were to be extended to J&K State by the President of India, the prior "concurrence" of the State Government was required. And another feature is that concurrence of State Government was provisional, and concurrence had to be ratified by the State's Constituent Assembly after it was convened (Article 370(2) says: "If the concurrence of the Government of the State be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.").

One would ask what about those approvals that were given by the regent or Maharaja even before issuance (1st May, 1951) of notification for election of Constituent Assembly. It is also suggested by some that in view of Article 370, the State government's authority to give the "concurrence" lasts only till the State's Constituent Assembly is "convened". But such pleaders could be asked that had by then the Regent been removed, how could India presume that Maharaja would go away to the choice of Abdullah? This need to be answered. No one should overlook the hard fact that Yuvraj had issued proclamation only on 25th November, 1949 to own the Constitution of India that was being drafted.

Once the Constituent Assembly met, the State Government could not give its own "concurrence" lays Article 370. Although the proclamation dated 1st May, 1951 did not say so, anyhow since the Yuvraj or Maharaja himself did not contest Article 370, it can be taken that it carried their consent.

No doubt, the President of India can exercise power to extend any provision of the Indian Constitution to Jammu and Kashmir (J&K) indefinitely as long as Article 370 is there and as long as the constitutional provisions are not violated.

Article 370(3) empowers the President to make an Order abrogating or amending it and mentions that "the recommendation" of the State's Constituent Assembly "shall be necessary before the President issues such a notification".

Article 370 cannot be abrogated or amended simply by recourse to the amending provisions of the Constitution of India which apply to all the other States; namely, Article 368 (Power of Parliament to amend the Constitution and procedure therefor) since in relation to Jammu & Kashmir, Article 368 has a proviso which says that no constitutional amendment shall have effect in relation to the State of Jammu and Kashmir unless applied by Order of the President under Article 370. *But it is surely not ultimate.* More so, adding a proviso (to clause (2) of Article 368, the following proviso shall be added, namely: "Provided further that no such amendment shall have effect in relation to the State of Jammu and Kashmir unless applied by order of the President under clause (1) of Article 370) to Article 368 by a Presidential order on 14th May, 1954 (Constitution Application to Jammu & Kashmir, Order 1954 C.O. 48) is like amending Constitution of India by a Presidential order and this order is subject to critical judicial scrutiny since President has no authority to use the powers of Parliament under provisions of Article 370(1) for amending the Constitution. How it has not been subjected to judicial review for more than 6 decades could be a question. So, has been the addition of Article 35A in Constitution of India by same Presidential order and that has already been questioned by me for its constitutional truthfulness.

Those who say that any modification to Article 370 requires the concurrence of the State's government and ratification by its Constituent Assembly are not surely putting forward the correct constitutional points. *The correct requirement is "the recommendation" of the State's Constituent Assembly and not the concurrence of the State Government and ratification by the Constituent Assembly.*

J&K State Government still can surrender more subjects to the Central Government on its own. Moreover for making Article 370 inoperative, modification, literary speaking, recommendations of State Constituent Assembly are surely required ("Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this Article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the recommendation of the *Constituent Assembly of the State referred to in clause (2) shall be necessary* before the President issues such a notification).

(i) Abrogation of Article 370 and State of J&K:

Jammu and Kashmir is mentioned among the States of the Union in the First Schedule as required under Article 1. Article 370(1)(c) says: "The provisions of Article 1 and of this Article shall apply in relation to that State". Some people often suggest that Article 1 is applied to the State through Article 370 and ask what would be the effect of its abrogation, as has been demanded by parties like BJP/Shiv Sena.

This needs to be properly replied by the constitution experts. On the face of it, it could be said that in case 370 is abrogated or modified, Article 1 of the Indian Constitution still stays as well as stays the J&K Constitution. Article 1 of the Indian Constitution has the J&K State as territory of India and Constitution of J&K names the accession with India as truthful and Section 3 of the J&K Constitution says that "The State of Jammu and Kashmir is and shall be an integral part of the Union of India."

As regards to the argument, Article 370(1)(c) says: "The provisions of Article 1 and of this Article shall apply in relation to that State" and so Article-1 applies to J&K only as long as Article 370 is not abrogated. In simple words, it can be said that the authors of Constitution of India who did write the words 'abrogation' in the text surely never meant that J&K had not permanently acceded with India. *Further, in case the mention of the words "provisions of Article 1 and this Article "has to be taken in the sense as it has been interpreted by some then that about application of other articles to the State of J&K.* More so, Article 1 and words "this article" have been separated by the word "and' so the explanation extended could be no more than a simple point of argument.

As regards procedures to be adopted under Article 368 of the Indian Constitution, procedures can be amended. Article 368 makes no special reference for Article 370.

(Amendment of the Constitution of India Article 368: Power of Parliament to amend the Constitution and procedure therefor—(i) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this Article 368(5). For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article).

(ii) Constituent Assembly and Constitution of J&K:

Some have inferred that the power of President has to stop at the point the State's Constituent Assembly drafted the State's Constitution and decided finally what additional subjects to confer on the Union, and what other provisions of the Constitution of India it should get extended to the State, rather than having their counterparts embodied in the State Constitution itself. Whereas the proclamation for constituting State's Constituent Assembly did not say so. Nor have such references been made in the J&K constitution itself, there is Section 147 for the amendment of Constitution as well. **The restriction for not allowing amendment of the Sections 3, 5**

and 147 is there, the underlying purpose is that J&K will remain integral part of India (Section 3) and the Jurisdiction of Indian Parliament for making laws for state cannot be curtailed (Section 5) as regards some subjects in particular. There is no restriction for extending the Jurisdiction of the Union. Therefore, the suggestions saying that once the State's Constituent Assembly had finalised the scheme and dispersed, the President's extending powers ended completely, stands on invalid footing.

The other question is on which day the members of Constituent Assembly dispersed. No, they did not disperse, only the function they were performing ended and the members stayed and functioned thereafter to work as Legislative Assembly and to handle the legislative affairs of J&K as per Constitution of J&K under the aegis of Constitution of India. Yuvraj's proclamation in 1951 had named the Praja Sabha/ Constituent Assembly/Legislative Assembly to be same as far as Legislature was concerned and in 1957 Elections for Legislative Assembly were also held in the same way as were held for the 1951 Constituent Assembly.

Further if we go by such arguments then legally Article 370 too should have been got amended the same day. Why was not it? Did Constituent Assembly make any recommendations to President in this regard? There were no such recommendations at that time. The 'professors' must reply for the benefit of the innocent people of J&K who have been misinformed regularly over the years.

So, it has to be accepted that the draft of J&K constitution is not absolute and the Constitution can still be amended, provisions can still be extended even if there is no Constituent Assembly by the name. Even Constitution of India can be amended alongwith the procedure for amending the Constitution of India. It is so often said that the Central Government's policies, since 1953, have totally undermined its (Article 370) autonomy where as not even a single instance can be quoted where the constitutional limits have been violated. The other myth preached by even some legal experts is that

Article 370 cannot be abrogated whereas it is temporary provision and can be abrogated is well laid down in its body itself. (Article 370(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

Some experts have demanded restoration of Article 370 by erasing the distortions whereas these experts should have been requested to re-read the text of the Article 370 and then talk of distortion. There is no distortion (even made through a proper constitutional manner by GOI). The text stands in original form.

Some people opine that Article 370 was intended to guarantee Kashmir's Autonomy. Even if it is accepted that intentions were so, does it mean that Kashmir is not J&K? Article 370 does not say so anywhere.

No doubt, some procedural channels (temporarily) were kept as regards J&K in view of prevailing circumstances like war was going on in the State, entanglement in UN, some commitments were made at personal level. An interim arrangement was only possible. So before deciding about the oneness, one has to take longer time in comparison to other states that too acceded to India. Other Princes too took some time to define their relationship/express total oneness with the Constituent Assembly of Independent India Dominion that was to frame the Constitution of India, may be from a day to some months (but before 26th January, 1950). It cannot be overlooked that Yuvraj Karan Singh, the Regent (designated authority under Indian Independence Act, 1947) too had issued a proclamation on 25th November, 1949 formally owning the Constituent Assembly of India and its final draft.

Some people argue that on December 4, 1964, the then Union Home Minister, G.L. Nanda said Article 370 would be used to serve as "a tunnel in the wall" in order to increase the Centre's power. No doubt, there is Article 249 that could be used to operate State List as it pertains to other Indian States (Power of Parliament to legislate with respect to a matter in the State List in the national interest). So, what was wrong in Mr. Nanda's Statement? After all, Article 370 refers to procedures, jurisdictions and powers. Mr. Nanda might have tried to express the likely objective in his own style and words and his expressions cannot be subjected to critical legal debate. It cannot be overlooked that the affairs in 1947 were entangled in procedural deficiencies even in the drawing of boundaries of Pakistan, the personal ambitions of those who were ruling J&K and those who were hoping to rule "Kashmir" after independence from British the irritated mindset of retreating British, environment created due to concepts carried by Sheikh Mohammed Abdullah with the special support from some Congress leaders and "undisclosed mindset or personal inclination of Nehru towards Sheikh. It could hence be inferred that in the case of J&K under the circumstances that prevailed before 15th August, 1947 and that resulted in view of the handling of the affairs after Maharaja of J&K signed the instrument of accession, the then Government of India decided to give some more time to the Maharaja of J&K to define the methods for internal governance of this Indian State. Since Hari Singh was surely finding it difficult to arrive at final settlements in view of his not having the Prime Minister of his choice. The Article was incorporated on 26th January, 1950, much before the Regent of J&K issued on 1st May, 1951 proclamation for elections to the Constituent Assembly of J&K. Even the much talked about 1952 (July-August 1952) Delhi accord was done between Nehru and Sheikh much after that.

J&K was included as an integral part of the Indian Union in the Indian Constitution, there is/was no Article or provision of Article 370/any other Article that could be used for disintegration/secession purposes as well as there is no reference in the constitution of India incorporated wherein even the acceding Maharaja could order or demand secession of J&K. So, Article 370 was surely a temporary provision inserted for meeting procedural needs.

The State Constituent Assembly came into existence in May 1951 as regards the then government of J&K was concerned since before that the proclamation of Maharaja had used the term National Assembly in March 1948. But the Constitution of India used the term 'Constituent Assembly' in Article 370 and it has to be understood that for all technical reasons, it carried the agreement of the Maharaja of J&K/Regent as well since there was no one else in J&K authorised to accord such acceptances in 1950.

The requirement that had been created by the Mountbatten's letter of 27th October for endorsement of the accession by reference to the people of J&K, although it was outside the Instrument of Accession signed by Prince of J&K and did not have any legal sanctity, the same elected Constituent Assembly, thereafter, even endorsed Nehru/Sheikh Delhi Agreement in August 1952 and also ratified/endorsed in February 1954 [the month in which it accepted the reports of the (J&K) Principles Committee and the Draft Committee].

The accession construed by Maharaja on 26th October, 1947 (the reference of this is clearly made the preamble of J&K Constitution):

"WE, THE PEOPLE OF THE STATE OF JAMMU AND KASHMIR, having solemnly resolved, in pursuance of the accession of this State to India which took place on the twenty-sixth day of October 1947, to further define the existing relationship of the State with the Union of India as an integral part thereof, and to secure to ourselves IN OUR CONSTITUENT ASSEMBLY this seventeenth day of November, 1956, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION". This is from the Constitution of J&K as adopted on 17 November, 1956.

So, it is extremely unreasonable for anyone to quote and interpret the affairs making isolated references.

Questions have been raised by some people on 30th July, 1986 over Presidential order under Article 370, extending Article 249 of Constitution to Jammu and Kashmir in order to empower the Parliament to legislate even on a matter in the State List on the strength of a Rajya Sabha resolution alleging that concurrence to this was given by the Centre's own appointee, Governor Jagmohan. But, such expressions are nothing but making an allegation for allegation sake only. Mr. G.A. Lone, a former Secretary, Law and Parliamentary Affairs, to the State Government is quoted as having disclosed in his article in "Kashmir Times", local newspaper (20th April, 1995) that this manipulation was done "in a single day" against the Law Secretary's advice and "in the absence of a Council of Ministers". First thing is that there is no particular State list for J&K and such people should not confuse the common man. Second point is that such experts are themselves agreeing here that there is special state list for J&K and the subjects included in the "State List" for J&K are other than defence, foreign affairs, communications and allied matters and J&K Constitution is a bible document of procedures/codes to operate upon the subjects included in the "State List" for J&K. Further, it was not unconstitutional for the President to issue an order under Article 370, extending to J&K (not only Kashmir as many address) Article 249 of the Constitution of India in order to empower the Parliament to legislate on some matters like other States on the strength of a Rajya Sabha resolution. Governor Jagmohan was not somebody's personal appointee, he was appointed under the Constitutional provisions legally incorporated/extended to J&K and his concurrence qualified as concurrence of State Government as per J&K Constitution that some experts plead to be the most sacred document, though it has been given to J&K by Constitution of India. Surely it reflects their biased mindset, Governor was appointed under Constitution and not arbitrarily. No legislature or democratic government that followed in J&K thereafter legally questioned the concurrence given by Jagmohan. Such experts could better approach SC of India (although as per such experts jurisdiction of SC should not have been extended to J&K). It is better that they should have mentioned legal deficiency instead of laying strengths on assumptions alleging that people then had unfair intentions and gave concurrence or consents under the undue influence of those at Delhi. Similarly, Mr. Lone, the Law secretary came out after 13 years as to why did he not resign on such a serious matter, why he did not expose the real face in real legal terms in 1986 itself.

(iii) Double speak on Article 370:

Extending their arguments those who have been accusing Union Government/Indian leadership/President of India/ Governor of J&K plead that in relation to other States, an amendment to the Constitution in some cases would require a two-thirds vote by both Houses of Parliament plus ratification by the States (Article 368) whereas for 'Kashmir', executive orders have sufficed since 1953 and can continue till Doomsday. Uniquely, Kashmir negotiated the terms of its membership of the Union for five months. Article 370 was adopted by the Constituent Assembly as a result of those parleys. This allegation in a way alleges that incorporation of the temporary provision of Article 370 was in a way unfair for 'Kashmir' (J&K). But at the same time, they also side with those who accuse the J&K Legislators/J&K Governments/GOI/India Parliament/ Governors of eroding Article 370 and bringing J&K unduly/ near to other Indian states as regards handling the local affairs. Seniors like A.G. Noorani have questioned that how long for Kashmir destinies would be decided only through executive orders under the provisions of Article 370. The simple answer could be when all the provisions of Constitution of India shall apply to J&K like any other Indian states, of course, the temporary Article 370 will have to go and "J&K"/well wishers of 'Kashmiris' will have no occasion to complain of undue constitutional treatment through "executive" orders. Of course, not much will be left for some people to exploit the innocence and ignorance of common people.

It is not out of place to mention here that Article 35A too was incorporated through a Presidential order under Article 370. It was under this article that local Constituent Assembly of J&K could write local provisions/laws like Permanent Resident of J&K with provisions that could violate Articles 15, 16 and 19 of the Indian Constitution. Why could not they say something wrong in such provisions?

(iv) Extension of Indian Constitution to J&K:

The Constituent Assembly of India adopted the Constitution on 26th November, 1949. A day earlier, the ruler of Jammu and Kashmir made a formal Proclamation on the future Constitution of India declaring that *"it shall insofar as it is applicable to the State of Jammu and Kashmir, govern the constitutional relationships between this State and the contemplated Union of India".*

People who advocate for the Greater Autonomy/those accuse GOI/India for having eroded the constitutional autonomy of Kashmir or broken the promises/commitments made with Kashmiris before accession or in 1947 suggest that Article 370 is more than a simple provision of Constitution of India, rather they call Article 370 a sacred contract with the State. No doubt, for conduct of the internal socio-economic operations on 26th January, 1950, the President made his first order under Article 370, THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDER, 1950 regarding various provisions of Constitution of India as shall apply in relation to the State of Jammu and Kashmir and the exceptions and modifications subject to which they shall so apply. It will not be proper to say that the order was for extending some specified provisions of the new Constitution (Constitution of India) to the State, it was for application.

(v) Accession 1947: Indian Constitution: Article 370: Delhi Agreement

The very simple but important point that some people fail to understand is that the Maharaja of J&K had acceded to India in October 1947 and had sent his representatives to participate in Constituent Assembly of India much before 25th November, 1949 and, hence, had much earlier consented to own the Constitution of India. With accession of 26th October, 1947 Maharaja had not surrendered all his rights of a Prince/Head of the Government of an acceding Princely State.

As said earlier, some procedural channel was kept as regards J&K in view of prevailing circumstances temporarily to stay for longer time in comparison to other states that too acceded and the Princes there too took some time to define their relationship express total oneness with the Constituent Assembly of Independent India Dominion that was to frame the Constitution of India, may be from a day to some months. It cannot be overlooked that Yuvraj Karan Singh, the Regent (designated authority under Indian Independence Act, 1947) too had issued the proclamation of 25th November, 1949 formally owning the Constituent Assembly of India and its final draft. This fact is very reluctantly mentioned by "experts". So, it is not wise for anyone to call Center-State relations, in such context, a contract.

Those who discuss Article 370 and aspirations of Kashmiris often say that Jawahar Lal Nehru was eager to secure Kashmir's "closer integration" with India and Sheikh Abdullah wanted. But these people forget that in technical terms, it was not the close constitutional integration of J&K with India that was/is the need but it was/is the close executive and judicial procedural integration that could named as the need. Those who say that the Delhi Agreement that was announced at a press conference in Delhi on 24th July, 1952 by Nehru and Sheikh had no legal force simultaneously call it a Union-Centre accord. Not only this, they even suggest with authority that THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDER, 1950 Presidential order was necessitated since Delhi Agreement, 1952 had no legal sanctity by itself and order was issued under Article 370 after concurrence was given by 'Sheikh'. It is true that a simple agreement between Nehru and Sheikh had no legal/constitutional validity/force. But it should not be ignored that Sheikh had no authority to concur on such issues in July/August 1952 unless it was authorised/concurred/endorsed by Regent/Maharaja. Going by the events thereafter it may not be wise to commit to the statement that Sheikh Abdullah was for ensuring a popular democratic government. Rather demonstrated his intentions to be more for his personal choices as far as possible. No the then "Delhi" too revolved the J&K (Kashmir) issues only around the likes/

dislikes of Sheikh Mohammed Abdullah which also became the reason for prolonged confusions in the minds of the acceding/acceded prince of J&K. Many years after that some commentators are still focused on Sheikh Abdullah only and do not make any reference to the importance of the Regent, unless they are compelled.

(vi) President too saw Article 370 Only a Time Being Provision:

Going by some of the quotes mentioned above (accepting them in the form as are quoted), (i) it emerges recommendations made by the J&K Constituent Assembly/State Government as regards the constitutional matters could also be modified/refused and were not sure binding on the President; (ii) other thing that should rather have been inferred from the above instances is that President of India might be wanting that Nehru gives final word to his friend Sheikh Abdullah that he has been too much accommodated. (It was only due to such reasons that Sheikh Abdullah landed the Union in so difficult position that Nehru had no option to get him dismissed and even arrested); (iii) The then President, Dr. Rajinder Prasad wanted to make it clear that Article 370 is temporary and uncertainty should not be continued for more time; (vi) The process President suggested indirectly pointed towards the need for total/more involvement of Maharaja/Regent in the affairs.

The President had also said: "The conclusion, therefore, seems to me to be irresistible that Clause (3) of Article 370 was not intended to be used from time to time as occasion required. Nor was it intended to be used without any limit as to time. The correct view appears to be that recourse is to be had to this clause only when the Constituent Assembly of the State has been fully framed."

(i) So, it could be inferred that President in a way suggested that the finalisation of the exercise to be done by Constituent Assembly should be expedited, the local constitutional head as per the terms of accession/J&K Constitution Act of 1996 Samvat (Maharaja/Prince/Regent) should favourably accept it and endorse it for acceptance by GOI/President; and then only India can make preferably orders covering all possible issues in sight to end confusions/prevailing uncertainty in governance later.

(ii) Although not officially documented, from the events it could be assessed that it was Sheikh who brought pressures on REGENT from Delhi to accept 21st August, 1952 resolution of Constituent Assembly (that in a way authorised the PM of the interim Government, Sheikh Abdullah to carry the resolution to the Government of India and had made no reference of the Regent for the purpose) as regards elected Sadar-e-Riyasat.

(iii) It was so compassionate attitude of the Regent that then followed the J&K Constitution, 1996 Samvat Amendment order 17th November, 1952 that was out on 17th November, 1952. It could be only the outcome of Nehru's pressure that Karan Singh had been quoted elected as Sadar-e-Riyasat by the Constituent Assembly on November 15, 1952. (accepting and projecting Karan Singh as Sadar-e-Riyasat acting on the advice of his Council of Ministers even before the Regent issued the Constitution amendment order on 17th November, 1952.

(vii) Delhi Agreement 1952: Residuary Powers:

An agreement between Jawahar Lal Nehru and Sheikh Mohammed Abdullah is often referred to while accusing the Indian State for not having honoured commitments made with 'Kashmiris' in 1947. Among other things, it is pleaded that as per the Nehru-Abdullah Agreement in July 1952 ("the Delhi Agreement") "the residuary powers of legislation" (on matters not mentioned in the State List or the Concurrent List), which Article 248 and Entry 97 (Union List) confer on the Union, will not apply to Kashmir, whereas the Presidential order of 30th July, 1986 purported to apply to the State Article 249, which empowers the Parliament to legislate even on a matter in the State List if a Rajya Sabha resolution so authorises it by a two-thirds vote. But it amended Article 249 in its application to Kashmir as in effect to apply Article 248 instead—"any matter specified in the resolution, being a matter which is not enumerated in the Union List or in the Concurrent List." The

Union, thus, acquired the power to legislate not only on all matters in the State List, but others not mentioned in the Union List or the Concurrent List - the residuary power.

Those who question must understand that whatever was done was done with people's mandate. The Delhi Agreement was not a Constitutional document, still no Indian leader or government that followed Nehru at Delhi has disowned the existence of this agreement as was arrived between two persons.

The counterquestion could be that the Regent, who could sign, lay opinion or authorise on so-called agreement like 1952 Delhi Agreement with GOI but it could not be signed by two individuals like Nehru and Sheikh. Cannot it be alleged that Nehru had unduly forced Yuvraj to lay at low profile? Anyhow what was done was done since there was no State list particularly defined for J&K as for other States. The action was valid legally.

(viii) Delhi Agreement Was Not the Word of God:

Some people have opined that the 1954 Presidential order had to implement the Delhi Agreement and was made in haste even when the State's Constitution was yet to be framed. They also say that it was in some respects beyond the Delhi Agreement. Whereas THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDER, 1954 of the President nowhere mentions that the order sought to implement the 1952 Delhi Agreement. Moreover, there could be many other reasons/needs/principle fact on which the requirement for issuing such order was based. Order had to be based on Constitutional provisions as existed at time/acceptance of the State Government/Sadar-e-Riyasat/Constituent Assembly and let us say even on the basis of messages emerging from 1952 Delhi Agreement. We have to look at the order and its validity. The order was valid.

(ix) Delhi Agreement and Sheikh Abdullah:

Events took a tragic course in 1953. The Sheikh was dismissed from office on 8th August and imprisoned on 9th August, 1953. A memorandum was given by the Colleagues of

Sheikh Abdullah to Sheikh Abdullah Interim Government on 8th August, 1953. The memorandum said:

"Since the formation of the present Government, in spite of the constant endeavour of your colleagues to secure maximum agreement and unity in the formation and execution of essential policies in accordance with the mandate given by the people, you have frequently adopted certain arbitrary measures complete denial of the right of expression of opinion of even your own colleagues in the handling both of external and internal affairs of the State." ...."But we regret to observe that you have not only disregarded the wishes of your colleagues in the Cabinet but have acted in the Legislative Assembly also in a manner which denied the right of freely expressing their opinions to the representatives of the people in regard to the basic policies pursued by the Government." ... "you have consistently refused to acknowledge responsibilities that devolve on you as the Prime Minister of the State by not following the declared policies that form the basis of the Government. You have tended to act in a manner that has generated uncertainty, suspense and doubt in the minds of the people of the State in general and of those in Jammu and Ladakh in particular." "The united will of the people stood solidly behind this act of Kashmir's accession to India. While accepting our request, the Government of India assured us of the right of self-determination for our people. After the convening of the Constituent Assembly, certain inescapable elaborations of the State's relationship with India were defined in the Delhi Agreement, of which you were the Chief Architect on our behalf. Your stand was unanimously endorsed by the Government, the National Conference, the Indian Parliament and the Constituent Assembly of the State. But you have not only deliberately delayed implementation of the agreements on these matters which form the sheet-anchor of our policy, but have purposefully and openly denounced these in public. You have thus arbitrarily sought to precipitate a rupture in the relationship of the State with India. Though it is true that the people of the State have the ultimate right to decide their future, the conditions of chaos and confusion which are being engineered today by you are bound to be fatal for the exercise of the right of self-determination by our people. Under these circumstances, what seems inevitable is that interested foreign powers may well take advantage of and exploit the situation for their own selfish purpose. Mr. M.A. Beg has persistently been following policies of narrow sectarianism, and communalism, which have seriously undermined the oneness of the State. Unfortunately, you have been lending your support to his policies in the Cabinet and his activities in public. This has generated bitter feelings of suspicion and doubt in the minds of the people of various constituent units of the State. You have connived at all these unfortunate happenings and thus strengthened and encouraged the forces of disruption. The result is that unity and the secular character, the two fundamental aspects of our State, stand threatened today."… "We have been constantly urging upon you to put an end to these unhealthy tendencies and to undertake unitedly measures for restoring the moral of the people. In spite of our best intentions, we have failed in our efforts. It is, therefore, with great pain that we have to inform you of our conclusion that the Cabinet, constituted as it is at present and lacking as it does the unity of purpose and action, has lost the confidence of the people in its ability to give them a clean, efficient and healthy administration". And the dismissal order was issued by Sadar-e-Riyasat on 8th August, 1953 ("Whereas for some months I have been noticing with growing concern that there have existed acute differences of opinion between members of the Government on basic issues—political, economic and administrative—affecting the vital interests of the State; …..And whereas on these fundamental issues, the views of a majority of the members of the Cabinet are sharply opposed to the view held by the Prime Minister and one of his colleagues; ……And whereas efforts to work in harmony and pull together as a team having failed,……And whereas a state has reached in which the very process of honest and efficient administration has become impracticable; … I, Karan Singh, Sadar-e-Riyasat, functioning in the interests of the people of the State, who have reposed the responsibility and authority of the Headship of the State in me, do hereby dismiss Sheikh Mohammed Abdullah from the Prime Ministership of the State of Jammu and Kashmir, and consequently the Council of Ministers headed by him is dissolved forthwith". These are well-speaking official documents that have not been challenged in any court/ quashed by any court. No other stories need be quoted that Sheikh himself was accused by his colleagues for not being serious about Delhi Agreement, whereas some commentators have very much relied upon the Delhi Agreement.

Why A.G. Noorani has not centered his commentary around these facts is a question. These facts also make it clear why other princes took only from few days to few months after accession for total participation in the new dominion constitution of India and for J&K, the issues remained hanging for 6 years till 1953, when Sheikh was earlier projected by Nehru as the Indian of class one and a staunch votary of the Indian Dominion.

(x) June 2000: Autonomy Resolution of J&K Legislative Assembly:

A resolution was passed on 26th June, 2000 recording its acceptance of the report of the State Autonomy Committee (1999) and asking "the Union Government and the Government of Jammu and Kashmir to take positive and effective steps for the implementation of the same." The same was rejected by the Union Cabinet (It was on 4th July, 2000 that the Union Cabinet said that the resolution was "unacceptable... would set the clock back and reverse the natural process of harmonising the aspirations of the people of Jammu & Kashmir with the integrity of the State) and this issue is quoted by many to demonstrate why Delhi has ignored the wishes of the people of J&K. In this regard, one thing could be surely said that keeping in view the manner the J&K affairs have been mishandled all these years, the best course would have been to put the resolution before the Parliament for examination since it was ultimately the Parliament that had to complete the process. More so the Autonomy Committee Report Resolution had nowhere questioned the 1947 Accession, the supremacy of the Indian Constitution and Indian Nationality; it could be seen as a demand on review of the power sharing between the Union Government and the State Government. Let all political parties who had so far remained mum on issues like modification/ repeal/abrogation of Article 370 open out their cards. After all it had been resolved by the J&K Legislative Assembly with a huge VOTE and people have to be given a reply worth their VOICE.

Still it could be asked to the promoters of Autonomy Resolution that why did the then NC Government not follow the procedure laid in Congress and Sheikh Abdullah/Indira Gandhi & Sheikh Accord of 1974 (although it had become ineffective after the exercises done by Sheikh Abdullah-led Governments in 1975 and 1977) for corrections, thereafter, on case-to-case basis and sent the cases to GOI instead of doing a formality of getting a resolution passed, that even if agreed upon, the corrections/reversions could not be done with a blanket executive order of the GOI since all modifications/extensions had been done under proper constitutional orders/authorities/ provisions by earlier Governments/legislatures; procedures for corrections, if could be done, had to be found and applied in constitutional manner.

In case the State Autonomy Report in a way recommended moving to position/status as it existed before 1953, then (1) it should have also touched the deficiencies in the manner Sheikh Abdullah handled this issue in 1975 almost closing the issues, (2) How would the new Government be installed, how new Constituent Assembly of J&K would be elected, who would head the interim Government (surely not the 2000 Chief Minister)?

For argument sake, one can ask that, on the one hand, the 'professors' so vociferously endorse the resolution passed by 2000 J&K Assembly as real voice of the people of J&K where as the same people have been endorsing B.K. Nehru (Ex-Governor, J&K) who had alleged that all elections in J&K had been rigged. Then, how they endorse that the 2000 NC Government carried the real mandate of the people of J&K? Some say that the opinion of Union Cabinet was a patent falsehood, that everyone would agree. But question is whom they count in "everyone". In case 'they' means all people of J&K, they are surely overestimating the level of their information. Of course, these people often refer to Kashmir (for J&K) and Kashmiris (for people of J&K) in their quotes but still their conclusions may not fit to the mind of all the people of even the Kashmir Valley.

After the resolution adopting the Autonomy Committee Report, the then J&K State's Law Minister, P.L. Handoo is quoted as having said on 26th June that the people "want nothing more than what they had in 1953". But no one has cared to note that (i) Mr. Handoo did not mention a cut-off date for 1953; (ii) did he want Sheikh or his representative to be installed back, and, if so, on what basis; (iii) or did Mr. Handoo mean that people of J&K wanted to be governed by J&K Constitution Act, 1996 Samvat? And even if against all odds, it could happen then surely neither Congress nor NC could be given the administration on 'personal equation' basis as it happened in 1947. Mr. Handoo has since unfortunately left us and cannot suggest. Some people have been supporting the J&K State's Finance Minister, Abdul Rahim rather a moving spirit behind the Report (SAC), suggesting that Government of India must once again set up a ministerial committee in order to initiate a dialogue on the report. Why again a dialogue? Why did not they proceed as per the personal accord of 1974 between Indira and Sheikh and then see the response of Delhi? Surely they do not appear interested in any solutions, they feel benefit in confusions continuing.

(xi) Rigged Elections:

No rigging in elections could be alleged anywhere and any time. But when such allegations are made in absolute terms and sometimes even target the integrity and truthfulness of a nation like India, the allegations cannot be ignored so casually and must be addressed to. Those who have been supporting the allegations emerging mostly from the Kashmir Valley leaderships that all the elections in J&K have been rigged by the Central

Government or its agents and the protesting voice of State's people have been stifled through rigged elections. But no one has quoted any legitimate protests from the people of J&K. Simply siding with those who have occasionally raised some questions more to attract attention of New Delhi (but also did not want to lose the goodwill of Delhi, so that they retain the chances for remaining in power) and did not do anything to wipe out the confusions that were created by the manner in which Nehru and Congress handled J&K affairs from 1946 onwards is unfair to the interest of common man of J&K. In case all elections in J&K have been rigged, then where lies the logic to acknowledge the 1951 elections to J&K Constituent Assembly that had all 75 members belonging to National Conference (Congress did not contest elections), how could Congress Legislature Party, that had absolute majority in 1975, be taken as voice of people worth handing over the chair of Chief Minister to Sheikh Mohammed Abdullah, who had been dismissed and arrested by Regent/Sadar-e-Riyasat, J&K on 8th/9th August, 1953, how could the vote of 2/3rd majority in Assembly secured by National Conference in 1996 elections could be taken as fair and worth passing the 26th June, 2000 resolution on Autonomy Committee Report be taken as voice of the people of J&K, could be the questions that need answers from the same people.

Those who advocate for SAC report also agree that it provides a comprehensive survey of constitutional developments, which is useful in itself for its documentation. Listing 42 orders issued under Article 370, it says that not all these orders can be objected to (for instance, none can object to provisions for direct elections to Parliament in 1966). No doubt, the constitutional limits are to be respected and nothing undemocratic should be done to violate the constitution. On the one hand, some people advocate moving to 1953/earlier and, on the other hand, they talk of goods of some laws uniformly applicable in other Indian states and made applicable in J&K as well in 1966. It clearly shows the advocates are not interested in solution, they want only confusions and debates to continue.

(xii) Limits Set by Contents of Instrument of Accession were Absolute:

The ruler of Jammu and Kashmir acceded to India by an Instrument of Accession on 26th October, 1947 in respect of only three subjects—defence, foreign affairs and communications (a schedule listed precisely 16 topics under these heads plus four other elections to Union legislature and the like).

Such opinion makers repeatedly hide the fact that, to start with, all Princes had to do the same, may be for a day or a few months. It cannot be overlooked that Yuvraj Karan Singh, the Regent (designated authority under Indian Independence Act, 1947) too had issued a proclamation on 25th November, 1949, formally owning the Constituent Assembly of India and its final draft. J&K Affairs should not be presented before the common man by hiding such orders, otherwise it could be alleged that such opinion makers are more interested in misguiding the innocent common masses.

It has also been pleaded by some experts that Clause 5 of Instrument of Accession said that the Instrument (Instrument of Accession) could not be altered without the State's consent. Here too they are misrepresenting the text by ignoring that the expression used is Maharaja and not 'State', quoting the text like this can twist the facts.

Clause 5 said "...The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947, unless such amendment is accepted by me, an Instrument supplementary to this Instrument.

And Clause 7 read: "Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future Constitution of India or fetter my discretion to enter into arrangements with the Government of India under any such future Constitution."

So, one would also ask where lies any logic for using Mountbatten's letter of 27th October as commitment for determining the will of the people since there is no document available where Maharaja Hari Singh has accepted such expression concerning instrument of accession.

No doubt, Jammu and Kashmir (J&K) was then governed internally by its own Constitution of 1939. The Maharaja made an Order on 30th October, 1947, appointing Sheikh Abdullah the Head of the Emergency Administration, replacing it, on 5th March, 1948, with an Interim Government with the Sheikh as Prime Minister. It was enjoined to convene a National Assembly "to frame a Constitution" for the State. It cannot be overlooked that such procedural transition was also conceived by All India State Peoples' Conference before formal constitutional framework could be drawn in the Independent India Dominion. It is also suggested that (i) negotiations were held on 15th and 16th May, 1949 at Vallabhbhai Patel's residence in New Delhi on Kashmir's future set-up; (ii) Nehru and Abdullah were present; (iii) Foremost among the topics were "the framing of a Constitution for the State" and "the subjects in respect of which the State should accede to the Union of India".

Let me not examine details and authenticity of events quoted. Sheikh Abdullah did not have any mandate/authority/approval to discuss issues like accession and future constitution on behalf of Maharaja. Therefore, such logics need not be addressed.

It is pleaded by some that in a letter of 18th May, 1949 Nehru informed Sheikh Abdullah that both Patel and he agreed that the Constitution of J&K was a matter for the State's Constituent Assembly. It was further said that as regards subjects of accession, the Jammu and Kashmir State stood acceded to the Indian Union in respect of three subjects, namely foreign affairs, defence and communications; and it will be for the Constituent Assembly of the State when convened, to determine in respect of which other subjects the State may accede"..... But it will not be out of place to mention here that before that on 5th March, 1948, Maharaja had called for a National Assembly to frame a constitution to be approved by Maharaja. In May 1949, it was still Maharaja, the local head of the State and Yuvraj Karan Singh was yet to be nominated by Maharaja as Regent. No doubt, the term 'Constituent Assembly' had been used in the Indian Constitution effective 26th November, 1949 and the proclamation asking for elections to Constituent Assembly of J&K was issued on 1st May, 1951 by the Regent of J&K, Yuvraj Karan Singh with the Authority of Maharaja Hari Singh. *References made do admit that the Constituent Assembly had not to decide the accession but had to decide which other subjects should be kept under the Union List in addition to subjects already mentioned in the instrument of accession. Hence, there should not be any other confusion about accession.*

On 16th June, 1949, Sheikh Abdullah, Mirza Mohammad Afzal Beg, Maulana Mohammed Saeed Masoodi and Moti Ram Baigara joined the Constituent Assembly of India after they were nominated by Maharaja (the acceding Prince) to participate in the Constituent Assembly of India on his behalf—the people of J&K.

People often discuss and quote from some debates on Article 370 (Article 306 A) and discussions held amongst N. Gopalaswamy Ayyangar/Patel/Sheikh Abdullah. After final orders/laws have been drafted, it will be wise to discuss only the written laws/orders as far as possible in case anyone is really interested to find some solution/end to debates/confusions. There could be no agreement or personal consent of ultimate value without the consent of Maharaja of J&K. If at all it had been so, I could term it illegal even today in case I have to hold with the Indian Independence Act, 1947 of the British Parliament.

Ayyangar's expositions of Article 370 in the Constituent Assembly on 17th October, 1949 were, no doubt, authoritative like his saying that: "We have also agreed that the will of the people through the instrument of the Constituent Assembly will determine the Constitution of the State as well as the sphere of Union jurisdiction over the State..." But in case some venture into looking in such quotes something beyond the legal jurisdiction of the instrument of accession without concurrence of the Maharaja/Regent, it could be said as an ill-conceived bit of imagination. No doubt, in a democracy, people have to and can decide how to conduct their civic activities. Legislature goes with the will of people. Anyhow the Constituent Assembly did also ratify the 1947 Accession, though it could be still argued by some that it was not needed. It is not fair to talk of conditional accession for those who depend so much on the Constituent Assembly logic to substantiate their point of view.

No doubt, the process of Presidential Orders altering constitutional provisions by a mere executive order had to end with the decision to have State's Constituent Assembly as well in place.

In 1949, G.S. Ayyangar had said, "The idea is that even before the Constituent Assembly meets, it may be necessary... that certain items, which are not included in the Instrument of Accession, would be appropriately added to that list in the Instrument... and as this may happen before the Constituent Assembly meets, the only authority from whom we can get consent for the addition is the Government of the State." This is also reflected in Article 370(1)(b). It has been argued by some that once Kashmir's Constituent Assembly was "convened" on 5th November, 1951, the State Government had lost all authority to accord its "concurrence" to the Union. But it should be overlooked by the experts that the concurrence/recommendations of State's Constituent Assembly had to be communicated to the President through the State Government and not direct by Constituent Assembly. Similarly, consent does not mean concurrence.

(xiii) The Jurisdiction of the Constituent Assembly of J&K:

Although it does not question J&K being India but still the argument that with the Assembly's (Constituent Assembly) dispersal on 17th November, 1956, after adopting the Constitution of Jammu and Kashmir, vanished the only authority which alone could cede: (a) more powers to the Union; and (b) accept Union institutions other than those specified in the Instrument of Accession and, hence, all additions to Union powers over local affairs of J&K since then are unconstitutional. In case such argument is accepted, then there was no need for having even section 147 in J&K Constitution, rather amendment to J&K Constitution should have been debarred and Article 370 of J&K Constitution should not been there. But it cannot be and is not so. Let the contestants know that Constituent Assembly of J&K was also named as Legislative Assembly in J&K Constitution Act, 1996, Samvat 2008, Samvat 1951 AD. So, after the work of Constitution drafting and acceptance was over, the same assembly stayed there to perform further in legislature as Legislative Assembly and now the LA could do the job of CA for the purposes of Article 370 if it still stayed. Nowhere is it mentioned so particularly in the Proclamation of 1st May, 1951 that the Constitution framed by CA would have focus on the subjects of accession for ultimate settlement with completion of constitution of J&K? In case J&K Assembly could thereafter amend J&K Constitution, it could also perform functions that could be performed by the Constituent Assembly within the provisions of Indian Constitution/State Constitution. It can also be said that Article 370 is nothing more than an Article of constitutional procedures as regards J&K as has been Article 371 and Article 249 for other States of India. So, in case someone has additions to terms like "Union powers" for giving some explanations, it should not be taken as unconstitutional.

(xiv) Delay in Settlement of J&K Affairs:

It has been well-quoted by the students of J&K affairs that Sheikh Mohammed Abdullah was pressing Delhi (Nehru) for redrafting "the Explanation" in Article 370 redefining the State Government as one headed by an elected "Sadar-e-Riyasat (State President) acting on the advice" of his Ministers. One would ask why did Sheikh press. Why did he not approach the Regent, who was the right authority for amending the J&K Constitution Act, 1996 Samvat or for proposing to GOI/President of India. Such actions of Sheikh clearly demonstrate the reasons for delayed settlement of issues concerning the acceded State of

J&K. He wanted the President to issue such order.

In reference to Sheikh's request, Nehru wrote on 29th July, 1952: "It is not a perfectly clear matter from the legal point of view how far the President can issue notifications under Article 370 several times." Without going into the time/purpose/validity of the references made that are not orders, only thing that one should ask is why did not Nehru in his letter ask Sheikh to approach through the Regent/Sadar-e-Riyasat of the time who still had powers to even dismiss his Prime Minister of interim local Government. Similarly on 6th September, 1952, President, Dr. Rajendra Prasad pointed out the illegality of such course pointing towards "the competence of the President to have repeated recourse to the extraordinary powers conferred on him" by Article 370. "Any provision authorising the executive government to make amendments in the Constitution" was surely not desirable. The President is said to have even endorsed Ayangar's views on the finality of a single Order under Article 370. No doubt, the most reasoned act and intention would have been to exercise the power, if possible, only once, for then alone would it be possible to determine with precision which particular provisions should be accepted and which should be modified. But this was not possible since there was no tuning between the Prince/Regent and Sheikh Mohammed Abdullah who had been so closely backed by the then Prime Minister, Jawahar Lal Nehru and earlier by the Governor General too.

(xvi) Presidential Order of 14th May was Not Under Valid Concurrence?

On 14th May, 1954, a comprehensive Presidential Order came under Article 370. It was purported to have been made with the "concurrence" of the State Government but still some people, for fault-finding sake, have tried to exploit the innocent people by saying that it drew validity from a resolution of the Constituent Assembly on 15th February, 1954, which approved extension to the State of some provisions of the Constitution of India. I fail to understand what these experts want to profess. Somewhere they reject the Regent as the State Government, somewhere they even question the resolutions of the Constituent

Assembly to their bare choice. A formal adoption and endorsement of the Presidential Order of 14th May, 1954 was also laid down by the Maharaja's representative, the Regent amended as the Sadar-e-Riyasat in the Jammu and Kashmir Constitution Act, 1996, Samvat of 2011, Samvat of 15th May, 1954 AD. So, the inference drawn by some experts that Presidential Order issued under Article 370 was not issued with the concurrence of State Government is totally misconceived and wrong/misguiding presentation of the official records. Anyhow before that the Constituent Assembly in February 1954 had ratified/endorsed the 26th October, 1947 accession by the Maharaja with India Dominion (necessity emerged in view of the controversy created by Mountbatten's letter of 27th October, 1947 as also discussed earlier.

(xvii) Even Sheikh Abdullah Government could not do So in 1975:

Those who quote that 94 of the 97 Entries in the Union List and 26 of the 47 in the Concurrent List were extended to Kashmir as were 260 of the 395 Articles of the Constitution have not been able to point out that what problem it created for the people of J&K in general. Nor could the Sheikh Abdullah Government do so in 1975. Only thing that could be inferred was that they have been retained by some Kashmir Valley-centric opinion makers since they are in the habit of using repeatedly Kashmir for J&K.

(xv) Constitution was Overridden by the Centre's Orders:

It has been propagated that the State's Constitution was overridden by the Centre's orders and its basic structure was altered. No Constitution can be written under government orders and whatever has been done was under the provisions of the Constitution of India and Constitution of J&K by the nominated authorities of the times under the constitutional provisions.

Similarly, some experts have been saying that Article 356 (imposition of President's Rule) was applied (21st November,

1964) despite provision in the State's Constitution for Governor's rule (Section 92). Whereas the same experts by making reference to extension of President's Rule in Punjab had said that it was due to Section 92 of J&K Constitution that J&K had been put to disadvantage whereas for extension of President's Rule in Punjab the Indian Constitution had to be amended a number of times.

(xvi) Democratic Authority of Elected Assembly cannot be Questioned:

On 24th November, 1966, denomination of Sadar-e-Riyasat was replaced with the nominated Governor after the amendment in the State's Constitution on 10th April, 1965. Some profess that this 6th Amendment is violation of Section 147 of the Constitution. They professed that Section 147 is immune to amendment and it referred to the Sadar-e-Riyasat and required his assent to the constitutional amendments. He was elected by the Assembly under Section 27(2) and to replace him by the Centre's nominee was to alter the basic structure. Whereas it was no amendment to Section 147 nor was an amendment to procedures. Section 147 has clearly laid down that Section 3 and Section 5 cannot be amended by State Legislature including Section 147 itself. Section 147 nowhere lays down that Section 27 cannot be amended. While amending the Sections 27, 29, 30 and like of J&K Constitution, only the procedure for the appointment of Sadar-e-Riyasat and nomenclature has been changed. Section 147 does not put any bar in this regard. The condition for passing a bill on constitutional amendment except undoing the Legislative Council (Section 50) needs the vote of the 2/3rd of the total membership (and not those present) of each house and that has nowhere been touched and it was with that force (even stronger than what is laid for amending Constitution of India) that Section 27 was modified by the J&K Assembly for the purposes of any further actions taken by Union thereafter. How could anyone question the democratic authority of the elected Assembly? Even Sadar-e-Riyasat had named the

Constituent Assembly as Legislative Assembly in his order of 9th August, 1953, inviting Bakshi Ghulam Mohammed to takeover as the Prime Minister of his Government.

(xvii) What Sheikh Did Not Object His 'Followers Objected:

One of the incidents quoted to demonstrate constitutional onslaught on J&K by the India government is that Article 370 was used freely not only to amend the Constitution of India but also of the State. On, 23rd July, 1975, an Order was made debarring the State legislature from amending the State Constitution on matters in respect of the Governor, the Election Commission and even "the composition" of the Upper House, the Legislative Council. Whereas this was done with the consent of the State Government, particularly Sheikh Abdullah. Even Sheikh Abdullah did not find any wrong in this. Then cause of whose heir apparent were they pleading?

(xviii) Apex Court Too Had Opined That Article 370 Could Still be Used:

In 1968, in Sampat Prakash vs the State of J&K, an SC Bench with Justice M. Hidayatullah held that Article 370 can still be used to make orders thereunder despite the fact that the State's Constituent Assembly had ceased to exist. *This reflects that the Legislative Assembly is the face of the Constituent Assembly for future references as defined in J&K Const. Act, 1996, amended 2008 Samvant.*

SC holding Clause (3) on the cessation of Article 370 has observed that since the Constituent Assembly had made no recommendation that Article 370 be abrogated, it should continue. Further the SC going by the State Constituent Assembly's recommendation of 17th November, 1952, which defined in an explanation "the Government of the State", inferred that the Assembly had "expressed its agreement to the continued operation of this Article by making a recommendation that it should be operative with this modification only." This resolution/definition was accepted by the then Regent also. The court laid down no limit whatever, whether as regards the time or the content. "We must give the widest effect to the meaning of the word 'modification' used in Article 370(1)." The net result of this ruling was to show that the Government of India could extend to J&K such of the provisions of the Constitution of India as it pleased. It was not possible for SC to decide the timeframe for future. Of course, it is not a blanket power, it has to be with the consent/concurrence of the State Government wherever still needed.

(xix) Were They Sincere to Atleast the People of "Kashmir Valley"?:

Sheikh Abdullah had no cards to play when he concluded an Accord with Indira Gandhi and became the Chief Minister on 24th February, 1975. Surely he was desperate to share power and ensure safe and secure future for his men. Otherwise, why should he have accepted the positions in case he had some cards to play and was sincere to atleast the people of the "Kashmir Valley"?

At the outset, on 23rd August, 1974, he (Sheikh) had written to G. Parthasarathy: "I hope that I have made it abundantly clear to you that I can assume office only on the basis of the position as it existed on 8th August, 1953." Judgement on the changes since "will be deferred until the newly elected Assembly comes into being". On 13th November, 1974, G. Parthasarathy and M.A. Beg signed "agreed conclusions". Article 370 remained; so did the residuary powers of legislation (except in regard to anti-national acts); Constitutional provisions extended with changes can be "altered or repealed"; the State could review Central laws on specified topics (welfare, culture and so on) counting on the Centre's "sympathetic consideration"; a new bar on amendment to the State Constitution regarding the Governor and the E.C. Differences on "nomenclature" of the Governor and Chief Minister were "remitted to the principals". Differences persisted on the E.C., Article 356 and other points.

On 25th November, 1974 the Sheikh sought a meeting with Prime Minister, Indira Gandhi. Her reply not only expressed doubt on the usefulness of talks but also on his commitment to "the basic features of the State's Constitution" and to "the democratic functioning" of the Government. Hurt, he wrote back ending the parleys. They met at Pahalgam. An exchange of letters, on 12th February, 1975, clinched the deal on the basis of the Agreed Conclusions. This was a political accord between an individual, however eminent, and the Government, like the Punjab Accord 24th July, 1985); the Assam Accord 15th August, 1985); the Nagaland Accord (11th November, 1975); and the Mizoram Accord (30th June, 1986) - each between the Government and the opposition. It cannot override Article 370. It bound the Sheikh alone and only until 1977. This was explicitly an accord on "political cooperation between us", as Indira Gandhi wrote (16th December, 1974). On 12th February, 1975, Abdullah recorded that it provided "a good basis for my cooperation at the political level". In the Parliament on 3rd March, 1975, she called it a "new political understanding".

Since Sheikh had found nothing wrong in post - 8th August, 1953 amendments, and to protect him for having not stood to his earlier slogans, his 'advocates' later named the 1974 accord as a political accord between persons. It is surely not fair.

He (Sheikh Mohammed Abdullah) was made Chief Minister on 24th February, 1975 backed by the Congress' majority in the Assembly and on the understanding of a fresh election soon. Sheikh Abdullah's memoirs Aatish-e-Chinar (Urdu) recorded Indira Gandhi backtracking on the pledge and the Congress' perfidy in March 1977, when she lost the Lok Sabha elections. Congress withdrew support and staked a claim to form a Government. Governor's Rule was imposed. The Sheikh's National Conference won the next elections with a resounding majority on the pledge to restore Jammu and Kashmir's autonomy, which was also Farooq's pledge in 1996.

Why did Sheikh Abdullah, after he came to power again after 1977 assembly elections, not do the corrections or send individual proposals for reversions to the position he had left in 1953 as quoted earlier. Who stopped him? Surely his own desires to be in power. They may plead Sheikh Abdullah alleged that the Janta Party Government in 1977 did not honour the commitment that Indira Gandhi's Government had made with him in 1974 Accord? Sorry, no one would buy such logics.

Those who plead against Indian intentions also say that the 1975 accord had collapsed since it was based on gross error. The Agreed Conclusions said (Para 3): "But provisions of the Constitution already applied to the State of J&K without adaptation or modification are unalterable." ……. One order can always be rescinded by another. All the orders since 1954 can be revoked; they are a nullity anyway. Baig was precariously ill and relied on advice which GP's "expert" had given him. He was one S. Balakrishnan whom R. Venkataraman refers to as "Constitutional Adviser in the Home Ministry" in his memoirs. Mr. A.G. Noorani claims that issues of such complexity and consequence are for counsel's opinion; not from a solicitor, still less a bureaucrat even if he had read the law. Even the Law Secretary would have insisted on the Attorney-General's opinion. Amazed at what Beg had told to his 'well-wisher' in May 1975, he claims having pursued the matter and eventually met Balakrishnan in 1987. He confirmed that he had, indeed, given such advice…. The 1975 Accord is worse than useless. It is harmful to the State's rights and interests. It has neither legal efficacy nor moral worth opined Baig's well-wisher.

So, point is that why has not Sheikh Abdullah been questioned by experts who are desperate to lay hands on any anti-India movements? Why accuse the constitution, legislature and intentions of India without any facts of law, but just out of imaginative inferences and one-sided arguments.

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Epilogue

Jammu and Ladakh regions were already parts of Jammu Raj before the control of the Kashmir Valley was also transferred to Jammu Raj by the British India Crown. The Kashmir valley was surrendered to the British India by the Punjab Sikh Empire as compensation for the lost battle in 1846. (Jammu region has nearly double the area of the Kashmir Valley and Ladakh region has five times larger area than the Kashmir Valley) After the British retreat the Princes were free to accede to one or the other dominion or remain independent. The Government of India Act, 1935, as adopted in the Indian Independence Act, 1947 provided, "An Indian State shall be deemed to have acceded to the Dominion if the Governor General has signified the acceptance of an Instrument of Accession executed by the ruler thereof." ....So the choice of joining either of the Dominions was left to the rulers of the States concerned. Moreover, in the Indian Independence Act, 1947, there was no provision for any conditional acceptance of accession.

Fears were there that the mention of Gurdaspur district in Schedule 2 of the Indian Independence Act, 1947 may not create problems of Jammu and Kashmir State in case it acceded to India. Maharaja Hari Singh did have an excuse for being late arguing that under the interim division of the British India as contained in the Indian independence Act, 1947, the district of Gurdaspur that included rail head of Pathankot had been first included in West Pakistan and actual position was known only after 17th August, 1947 (Radcliffe Award).

Hari Singh acceded to the Indian Dominion on 26th October, 1947 under a legitimate instrument of accession. But the letter addressed by Mountbatten, GGOI to Maharaja acknowledging the instrument of accession is being primarily used by some separatist elements to call the acceptance of Accession as conditional. The Indian leadership that is inheriting the name of Jawahar Lal Nehru must reply to such queries. To more of a disadvantage of India inter-regional divides too are emerging in J&K and there is utmost need to remedy the local doubts and grievances. So, as on date, the question for India is more of ideologically beating the separatist elements and the challenges they throw.

The text of Instrument of Accession executed by Maharaja Hari Singh was the same as was signed by other rulers of the princely States. *It could not be conditional as a mere acceptance by the Governor General was complete and final. The Maharaja said the terms of this my Instrument of Accession shall not be varied by any amendment of the GOI Act, 1935 or of the Indian Independence Act, 1947, unless such amendment is accepted by the acceding prince by an Instrument supplementary to this Instrument. But since it is now too late,* a widely acceptable thought need be made to emerge to settle the confusions as created over the years in the innocent minds of subjects of Jammu & Kashmir in general and those from the Kashmir Valley in particular.

The Government of India should not have ignored the statement of Hari Singh as made in his letter of 26th October, 1947 regarding his people. I quote: "The people of my State, both Muslims and non-Muslims, generally have taken no part at all (disturbances)". *The Maharaja had nowhere talked of any dispute regarding accession of J&K and involvement of people of Jammu and Kashmir State (even the Kashmir Valley in particular).* Then why this condition of settlement of issue of accession by reference to the people? Confusions about the 1947 accession of J&K with India have been created by the manner in which the accession was accepted by the Government of India and the manner in which Jawahar Lal Nehru handled the Kashmir affairs. People of India must forcefully question New Delhi, otherwise it will continue mishandling Kashmir affairs. For a conditional accession, the consent of Maharaja Hari Singh was a must and since it was not obtained, the letter has no significance. *But it is also a hard reality that the secessionists have been able to sow seeds of distrust against the 1947 Accession of J&K with India.* Hence, under the circumstances in hand today, India cannot so easily brush aside the acts of Mountbatten and Nehru that have provided ink to the drafts of demands of separatists and Pakistan to draft petitions against India. *These have to be exposed and nullified before the common people of Kashmir as well as the international community rather sleeping over the requirement. Rather wrongs have to be explained to people of other Indian states as well…*

It was in 1941 that J&K National Conference joined All India States Peoples' Conference (AISPC) and Sheikh Abdullah came more close to Nehru and Indian National Congress. Sheikh Abdullah declared before Nehru and Azad that the future and independence of J&K was inextricably linked with future and independence of India. It is not wise to selectively accept some actions/compositions/orders of the British and reject the others. The British was a foreign power that had unduly and unlegitimately encroached upon the lands and rights of the people of Indian subcontinent. *Indian people have every right to undo and reject the "destiny" as was written for India by the British Parliament. But for the sake of peace in the subcontinent and welfare of their own people, the people of Indian subcontinent (India/Bharat in particular) of 1940s (1945 to 1947) had even accepted the judgements written by those who had been the aggressors. No doubt, if the Indian history is seen and felt from the near it can be inferred that the Indian people exercised a very special type of democracy while the Monarchs ruled India. So, every Indian has right to profess/choose for a governing system of his choice but no one has any right to disintegrate the territories of India.* And, in case anyone dares to do so, then the Parliament of India has all powers/responsibilities to nullify any provision or amend any provision that can be used against the Nation. Those who contest that the Indian Independence Act, 1947 lays down that Princely States will have to or can accede to either dominion only for three subjects had made/are making over statement. The Indian Independence Act, 1947 of the British Parliament nowhere said like this.

The separatists/votaries of conditional accession do plead that J&K cannot be compared with other Princely States. Some have also succeeded in carrying untruthful message that the Instrument of Accession signed by Maharaja Hari Singh was special one and unlike other States, it was only for three subjects. Whereas the fact was the structure and the text and the spirit of the instrument of accession used by almost all princely states that acceded India dominion was the same. *Out of something like 565 states, the vast majority were irretrievably linked geographically with the Dominion of India. So, in view of time constraints, a common draft for instrument of accession was prepared. States, which had to accede to Pakistan, were not more than 15.*

Over the years, Pakistan and the anti-India forces have succeeded in describing the Indian complaint in the United Nations Security Council as a dispute between India and Pakistan or for some as dispute between the Kashmiris and New Delhi or for some a dispute regarding 1947 accession of J&K with India. All this has happened due to wrong handling, unwise documentation and insincere attitude of Indian leaders towards the national issues (Indian dominion interests). A dispute has been got registered at international levels out of no dispute by anti-India/anti-1947 accession elements.

Maharaja did not relish handing over power to Sheikh Mohammed Abdullah like the British was to handover to Congress. May be Hari Singh would have settled before 15th August, 1947 or even a month later with some leader other than Sheikh Abdullah if proposed by Indian leadership. But Nehru was very particular for Sheikh Abdullah. Sheikh too had some fears in the minds regarding there being some possibilities (may be remote) of democratic power going in the hands of some other leader/political group of J&K in case a regular democratic course was adopted for interim Government since Sheikh's National Conference had the Muslim Conference opposing it in the Kashmir Valley, in Jammu Province, the National Conference did not have much base and the Muslim leaders of Jammu, Poonch, Rajouri and other non-Kashmiri-speaking areas of J&K (even in the Kashmir Province) were *also not unanimously in favour of Sheikh's National Conference.* It could be inferred from the events that earlier Jawahar Lal Nehru supported Sheikh Abdullah for personal reasons and, later on, Nehru supported Abdullah in view of the situations that emerged due to delays and confusions before and after the 26th October, 1947 accession. The State Constituent Assembly ratified the accession of the State to the Union of India on 6th February, 1954. *The President of India, modifying the Constitution Application Order of 1950, issued the Constitution (Application to J&K) Order, 14th May,1954 under Article 370 of the Indian Constitution. No doubt, provision of a State Flag and emblem for Jammu and Kashmir have provided enough of working tools to those who advocate against J&K remaining a State of Bharat much outside the spirit behind the provisions.*

How could Article 370 be abrogated without giving a chance to a politician to exploit a Muslim or a Kashmiri Muslim has to be worked out. Will the Parliament of India forever remain helplessly looking towards the Legislature of J&K is the other question that the experts need to deliberate. The concept of abrogation of this Article has to be carried, particularly to the people of the Kashmir Valley, both technically and conceptually. Simple technicalities would not do in case India looks for long-term peace. The other question is: When Article 370 was already in place, from 26th January, 1950, what was the need for entering into the Delhi Agreement in August 1952. In a way, it had no legal sanction except that it was held by Jawahar Lal Nehru. Kashmir Accord was settled on 13th November, 1974 between the Prime Minister Indira Gandhi and Sheikh Mohammed Abdullah (in what capacity is not officially made public). At the maximum, this could be called an agreement between Sheikh Abdullah and Indira Gandhi or maximum Congress.

After Sheikh became the CM, a committee was constituted for reviewing the status of laws and it was inferred that no such correction/repealing/modification/any 'medication' was necessary and no extensions made till then were bad in intentions/result.

Inspite of so extra economic, administrative and political favours extended to the Kashmir Valley, New Delhi has not been able to win the confidence of people of the Kashmir Valley to the extent that even there are some who even challenge the 1947 Accession of J&K with India.

Some people in the Jammu region have started saying openly that the backwardness, poverty, underdevelopment, unemployment, poor tourist infrastructure and remoteness of people of this region are neglected since they have never raised questions on the validity of 1947 accession of J&K with India or accused India of being unfair in holding commitments made with people of J&K in 1947. Delhi has, no doubt, used Jammu only as their votary against separatists. Jammu migrants have been ignored for two decades only to project that terrorism is limited only to the Kashmiri Valley. Whereas separatist ideology may be more limited only to the Kashmir Valley, but the terrorism has equally affected the life, property, economy, progress, schooling of children in the remote areas of Doda, Rajouri, Udhampur, Pooch, Kishtwar, Ramban and even Kathua. Special packages need to be worked out and pursued for these people atleast now to save them from taking to other routes.

How fair and administratively practical is the demand of those who are asking for reorganisation of J&K will also have to be seen in reference to the erstwhile States of Punjab, Uttar Pradesh, Bihar and Madhya Pradesh. This should not been seen through communal angels.

Of course, *now* the disease cannot be medicated simply on technical lines, it will have to be addressed at social levels as well. In the Kashmir Valley, the memories of Maqbool Sherwani (who stood against the invaders in October, 1947 for India) are today lost in the name of Maqbool Bhat. (Bhat was hanged for killing a CID inspector of J&K Police. Maqbool was found guilty and sentenced to death in 1968. Maqbool Bhat masterminded the hijacking of an Indian Fokker aircraft to Lahore, Pakistan in 1971 and the hijackers declared affiliation with JKLF under the leadership of Maqbool Bhat. Maqbool Bhat, along with two others, managed to dig a tunnel under the Srinagar prison, and escaped to Pakistan, where they were briefly arrested. He was released in 1974, and two years later, he returned to India. His earlier death sentence was still valid, and he petitioned to the

President of India, Gyani Zail Singh for clemency. On 6th February, 1984, the JKLF men allegedly murdered the Indian diplomat, Ravindra Mhatre, in Birmingham. One of the demands in this kidnap was that Maqbool Bhat be released. After this, his petition for clemency was quickly rejected, and Bhat was executed in the Tihar Jail in New Delhi on 11th February, 1984.)

The falseness will have *to be* worked into trueness by the government.

No purpose would be served by simply carrying rakes of iron and bricks to the Kashmir Valley. Surely the actions and pogrammes like return of the displaced Hindu (Hindustani) too would return honour of India to the Kashmir Valley. Those who pushed Jammu and Kashmir in dark holes by treating the accession of Jammu and Kashmir with India in an irresponsible manner, issues of constitutional integration, and agreements with leaders from the Kashmir Valley as their personal subjects, need to be questioned more than even the separatists. No doubt, a very clear line has to be drawn between the separatists who directly or indirectly question Accession 1947 or J&K being India and those who firmly hold to Accession 1947 but do have their own views as regards the power sharing by the Central and State Governments.

It will be in the interest of India to handle the subjects of J&K, who have been made the victims of ill concepts and wrong information, compassionately aiming for corrections. Those who have been still cultivating ill concepts, their future growth must be checked. The subjects of J&K, who talk of issues and demands regarding Article 370, Autonomy, Self-Rule, Reorganisation of Jammu and Kashmir as well as the questions on issues like Armed Forces Special Acts, alleged human rights violations, rehabilitation of the misguided youth of J&K and UN Security Council Resolutions cannot be discussed in more details here but surely they have to be taken carefully by India. A clearline between the separatists and mainstream leadership will have to be drawn by India in her own interest.

But I hope a humble attempt made my me would help those concerned regarding the plight of Jammu and Kashmir to carry the issues and efforts ahead for achieving peace. Jammu and Kashmir cannot afford any more political gamesmanship.

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36. Annexure-K: Text of Indira Sheikh Accord, 1974.
37. Annexure-L1: Text of Resolution, 1946 of Congress Working Committee on Kashmir, 21st November, 1946.
38. Annexure-L2: Text of Statement, 1946 of Mirwaiz Moulvi Yousuf Shah on Congress Working Committee Resolution, 25th November, 1946.
39. Annexure-L3: Text of Resolution, Congress Working Committee on States, 15th June, 1947.

Annexures

ANNEXURE-A1

EXTRACTS FROM THE INDIAN INDEPENDENCE ACT, 1947

Text of Indian Independence Act, 1947

The Indian Independence Bill was formally introduced in the British Parliament on 4th July, 1947 and received the royal ascent on the 18th of the same month. It removed all limitations on the responsible government (or the elected legislature) of the natives, and until they developed their own constitutions, their respective governor-generals and provincial governors were to enjoy the same powers as their counterparts in the other dominions of the Commonwealth. This technical jargon, interpreted in common language, meant that India and Pakistan were to become independent from 15th August, 1947.

Indian Independence Act, 1947

An act to make provision for the setting up in India of two Independent Dominions, to substitute other provisions for certain provisions of the Government of India Act, 1935, which apply outside those Dominions, and to provide for other matters consequential on or connected with the setting up of those Dominions (18th July, 1947).

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Section 1

(1) As from the fifteenth day of August, nineteen hundred and forty-seven, two independent Dominions shall be set up in India, to be known respectively as India and Pakistan.

(2) The said Dominions are hereafter in this Act referred to as "the new Dominions", and the said fifteenth day of August is hereafter in this Act referred to as "the appointed day".

Section 2

(1) Subject to the provisions of subsections (3) and (4) of this section, the territories of India shall be the territories under the sovereignty of His Majesty which, immediately before the appointed day, were included in British India except the territories which, under subsection (2) of this section, are to be the territories of Pakistan.

(2) Subject to the provisions of subsections (3) and (4) of this section, the territories of Pakistan shall be:

(a) the territories which, on the appointed day, are included in the Provinces of East Bengal and Punjab, as constituted under the two following sections;

(b) the territories which, at the date of the passing of this Act, are included in the Province of Sind and the Chief Commissioner's Province of British Baluchistan; and

(c) if, whether before or after the passing of this Act but before the appointed day, the Governor-General declares that the majority of the valid votes cast in the referendum which, at the date of the passing of this Act, is being or has recently been held in that behalf under his authority in the North-West Frontier Province are in favour of representatives of that Province taking part in the Constituent

Assembly of Pakistan, the territories which, at the date of the passing of this Act, are included in that Province are in favour of representatives of that Province taking part in the Constituent Assembly of Pakistan, the territories which, at the date of the passing of this Act, are included in that Province.

(3) Nothing in this section shall prevent any area being at any time included in or excluded from either of the new Dominions, so, however, that:

(a) no area not forming part of the territories specified in subsection (1) or, as the case may be, subsection (2) of this section shall be included in either Dominions without the consent of those Dominions; and

(b) no area with forms part of the territories specified in the said subsection (1) or, as the case may be, the said subsection (2), or which has after the appointed day been included in either Dominion, shall be excluded from that Dominion without the consent of that Dominion.

(4) Without prejudice to the generality of the provisions of subsection (3) of this section, nothing in this section shall be construed as preventing the accession of Indian States to either of the new Dominions.

Section 7

(1) As from the appointed day:

(a) His Majesty's Government in the United Kingdom have no responsibility as respect the government of any of the territories which, immediately before that day, were included in British India.

(b) The suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise; and

(c) There lapse also any treaties or agreements in force at the date of the passing of this Act between His Majesty and any persons having authority in the tribal areas, any obligations of His Majesty existing at that date to any such persons or with respect to the tribal areas, and all powers, rights, authority or jurisdiction exercisable at that date by His Majesty in or in relation to the tribal areas by treaty, grant, usage, sufferance or otherwise:

Provided that, notwithstanding anything in paragraph (b) or paragraph (c) of this subsection, effect shall, as nearly as may be, continue to be given to the provisions of any such agreement as is therein referred to which relate to customs, transit and communications, posts and telegraphs, or other like matters, until the provisions in question are denounced by the Ruler of the Indian State or person having authority in the tribal areas on the one hand, or by the Dominion or Province or other part thereof concerned on the other hand, or are superseded by subsequent agreements.

(2) The assent of the Parliament of the United Kingdom is hereby given to the omission from the Royal Style and Titles of the words "Indian Imperator" and the words "Emperor of India" and to the issue by His Majesty for that purpose of His Royal Proclamation under the Great Seal of the Realm.

ANNEXURE-A2

A

Telegram from Prime Minister, Kashmir State to Sardar Abdur Rob Nishtor, States Relations Department, Karachi, 12th August, 1947.

Jammu and Kashmir Government would welcome Standstill Agreements with Pakistan on all matters on which these exist at present moment with outgoing British Indian Government. It is suggested that existing arrangements should continue pending settlement of details and formal execution of fresh agreement.

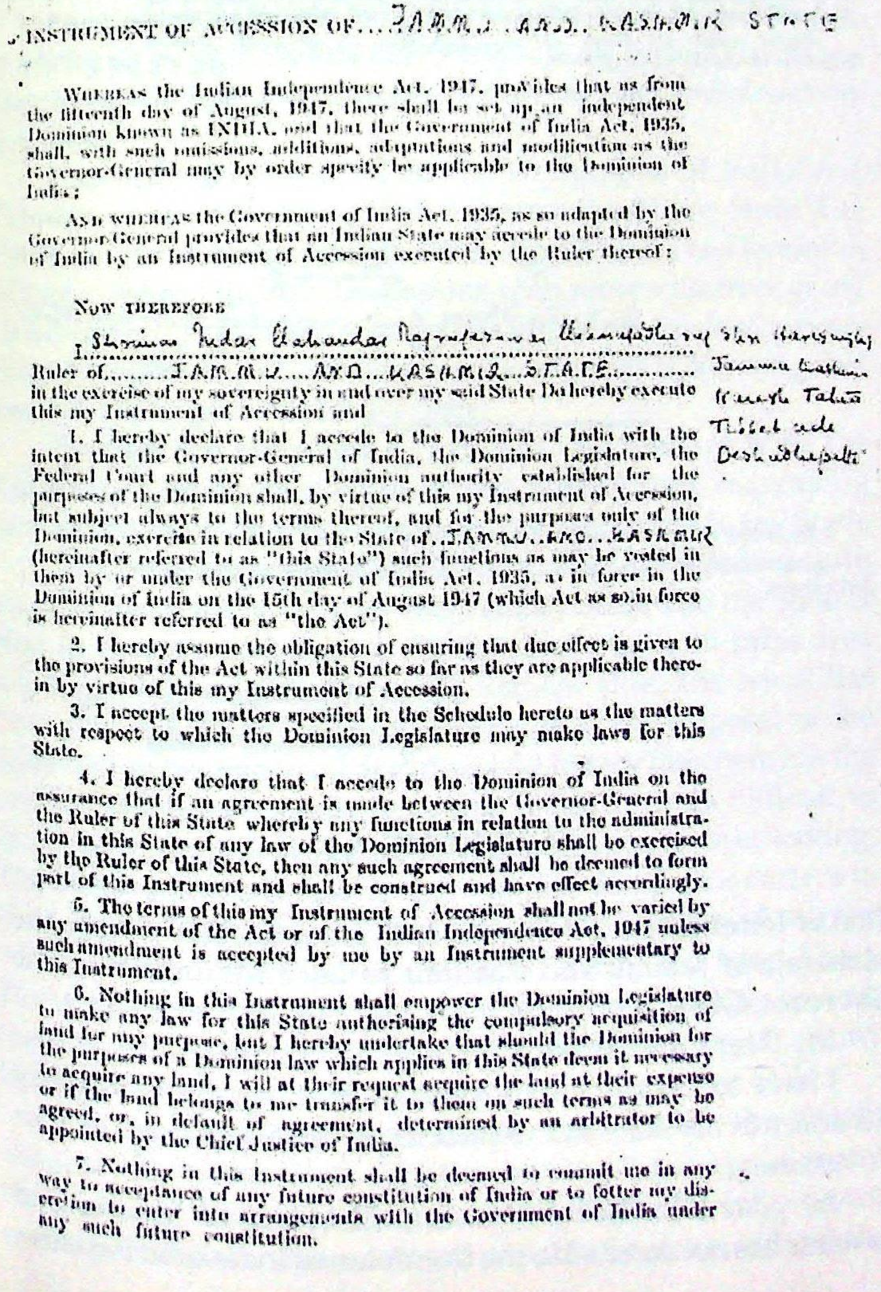
B

Telegram from Foreign Secretary, Government of Pakistan, Karachi, to Prime Minister of Jammu and Kashmir, 15th August, 1947.

Your telegram of the 12th. The Government of Pakistan agrees to have a Standstill Agreement of Jammu and Kashmir for the continuance of the existing arrangements pending settlement of details and formal execution of fresh agreements.

ANNEXURE-A3

Facsimile of J&K Instrument of Accession



INSTRUMENT OF ACCESSION OF...JAMMU AND KASHMIR STATE

WHEREAS the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA, and that the Government of India Act, 1935, shall, with such omissions, additions, adaptations and modifications as the Governor-General may by order specify be applicable to the Dominion of India;

AND WHEREAS the Government of India Act, 1935, as so adapted by the Governor-General provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof:

NOW THEREFORE

I Shriman Inder Mahandar Rajrajeswar Maharajadhiraj Shri Harisinghji Jammu Kashmir Naresh Tatha Tibbet adi Deshadhipati Ruler of........JAMMU....AND...KASHMIR...STATE............ in the exercise of my sovereignty in and over my said State Do hereby execute this my Instrument of Accession and

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of..JAMMU..AND...KASHMIR (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on the 15th day of August 1947 (which Act as so in force is hereinafter referred to as "the Act").

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

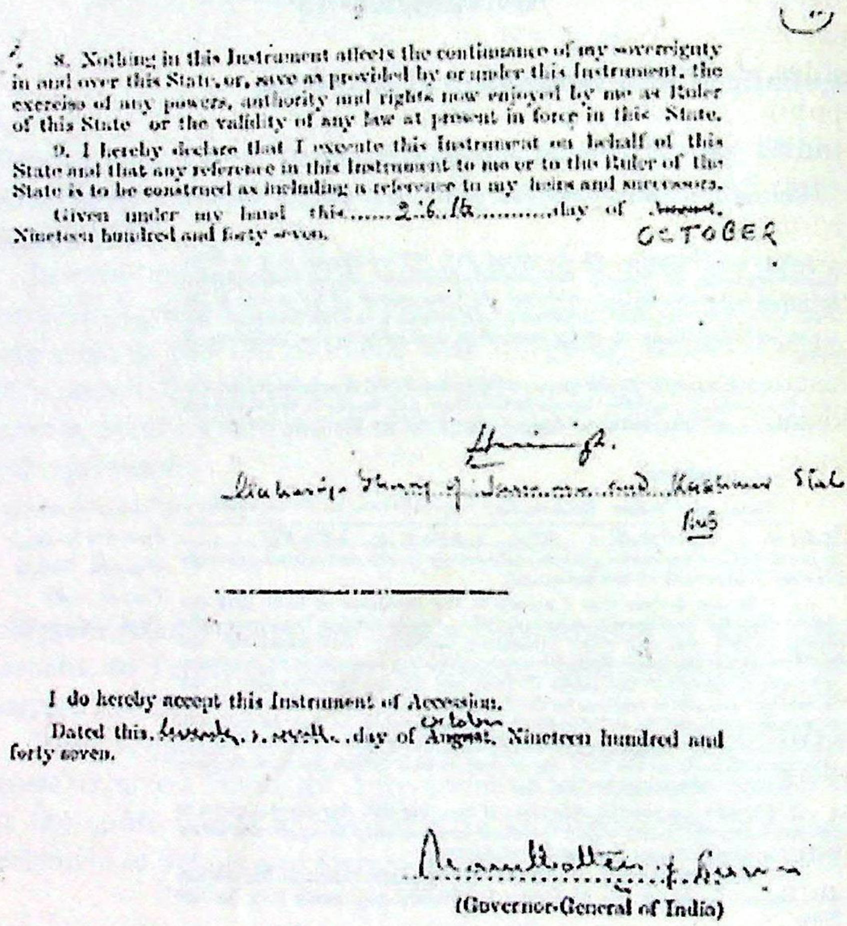
3. I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947 unless such amendment is accepted by me by an Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future constitution.



8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this......26th..........day of ~~August~~. OCTOBER
Nineteen hundred and forty-seven.

Maharajadhiraj of Jammu and Kashmir State

I do hereby accept this Instrument of Accession.

Dated this...twenty...seventh...day of ~~August~~ October. Nineteen hundred and forty seven.

Mountbatten of Burma
(Governor-General of India)

ANNEXURE-A4

Text of letter dated October 26, 1947 from Sri Hari Singh, the Maharaja of Jammu and Kashmir to Lord Mountbatten, the Governor-General of India.

My Dear Lord Mountbatten,

I have to inform your Excellency that a grave emergency has arisen in my State and request immediate assistance of your Government.

As your Excellency is aware, the State of Jammu and Kashmir has not acceded to the Dominion of India or to Pakistan.

Geographically my State is contiguous to both the Dominions. It has vital economical and cultural links with both of them. Besides, my State has a common boundary with the Soviet Republic and China in their external relations and Dominion of India and Pakistan cannot ignore this fact.

I wanted to take time to decide to which Dominion I should accede, or whether it is not in the best interests of both the Dominions and my State to stand independent, of course, with friendly and cordial relations with both.

I accordingly approached the Dominions of India and Pakistan to enter into Standstill Agreement with my State. The Pakistan Government accepted this Agreement. The Dominion of India desired further discussions with representatives of my Government. *I could not arrange this in view of the developments indicated below. In fact, the Pakistani Government is operating Post and Telegraph system inside the State.*

Though we have got a Standstill Agreement with the Pakistani Government permitted steady and increasing strangulation of supplies like food, salt and petrol to my State.

Afridis, soldiers in plain clothes, and desperadoes with modern weapons have been allowed to infilter into the State at first in Poonch and then in Sialkot and finally in mass area adjoining Hazara district on the Ramkot side. The result has been that the limited number of troops at the disposal of the State had to be dispersed and thus had to face the enemy at the several points simultaneously, that it has become difficult to stop the wanton destruction of life and property and looting. The Mohara powerhouse, which supplies the electric current to the whole of Srinagar, has been burnt. The number of women who have been kidnapped and raped makes my heart bleed. The wild forces thus let loose on the State are marching on with the aim of capturing Srinagar, the summer Capital of my Government, as first step to over-running the whole State.

The mass infiltration tribesman drawn from the distant areas of the North-West Frontier coming regularly in motor trucks using Mansehra-Muzaffarabad Road and fully armed with up-to-date weapons cannot possibly be done without the knowing of the Provincial Government of the North-West Frontier Province and the Government of Pakistan. In spite of repeated requests made by my Government, no attempt has been made to check these raiders or stop them from coming to my State. **The Pakistan Radio even put out a story that a Provisional Government has been set up in Kashmir. The people of my State, both Muslims, generally have taken no part at all.**

With the conditions obtaining at present in my State and to great emergency of the situation as it exists, I have no option but to ask for help from the Indian Dominion. Naturally, they cannot send the help asked for by me without my State acceding to the Domination of India. I have accordingly decided to do so and I attach the Instrument of Accession for acceptance by your Government. The other alternative is to leave my State and my people to fee-booters. On this basis, no civilised Government can exist or be maintained.

The alternative I will never allow to happen as long as I am Ruler of the State and I have life to defend my country.

I may also inform your Excellency's Government that it is my intention at once to set up an Interim Government and ask Sheikh Abdullah to carry the responsibilities in this emergency with my Prime Minister.

If my State has to be saved, immediate assistance must be available at Srinagar. Mr. Menon is fully aware of the situation and he will explain to you if further explanation is needed.

In haste and with kindest regards.

Yours sincerely

Hari Singh
The Palace, Jammu
26th October, 1947.

ANNEXURE-A5

Text of Instrument of Accession of Jammu and Kashmir State—26th October, 1947

Whereas the Indian Independence Act, 1947 provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA, and that the Government of India Act, 1935 shall, with such omissions, additions, adaptations and modifications as the Governor General may by order specify, be applicable to the Dominion of India.

And whereas the Government of India Act, 1935, as so adapted by the Governor General, provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof.

Now, therefore, I, Shriman Inder Mahinder Rajrajeshwar Maharajadhiraj Shri Hari Singhji, Jammu & Kashmir, Naresh Tatha Tibbetadi Deshadhipati, Ruler of Jammu & Kashmir State, *in the exercise of my Sovereignty in and over my said State do hereby execute this my Instrument of Accession and I hereby declare that I accede to the Dominion of India with the intent that the Governor General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of Jammu & Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India, on the 15th day of August, 1947 (which Act as so in force is hereafter referred to as "the Act").*

I hereby assume the obligation of ensuring that due effect is given to provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

I accept the matters specified in the schedule hereto as the matters with respect to which the Dominion Legislature may make law for this State.

I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor General and the Ruler of this State, whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of the State,

then any such agreement shall be construed and have effect accordingly.

The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or the Indian Independence Act, 1947, unless such amendment is accepted by me by Instrument supplementary to this Instrument.

Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purpose of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense, or, if the land belongs to me, transfer it to them on such terms as may be agreed or, **in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.**

Nothing in this Instrument shall be deemed to commit in any way to acceptance of any future constitution of India or **to fetter my discretion to enter into agreement with the Government of India under any such future constitution.**

Nothing in this Instrument affects the continuance of my Sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this 26th day of October, nineteen hundred and forty seven.

Hari Singh
Maharajadhiraj of Jammu and Kashmir State

Acceptance of Instrument of Accession of Jammu and Kashmir State

I do hereby accept this Instrument of Accession. Dated this twenty seventh day of October, nineteen hundred and forty seven.

Mountbatten of Burma
Governor General of India

ANNEXURE-A6

Text of Lord Mountbatten's letter dated 27th October, 1947

My dear Maharaja Sahib,

Your Highness' letter dated 26th October has been delivered to me by Mr. V.P. Menon. In the special circumstances mentioned by your Highness, my Government have decided to accept the accession of Kashmir State to the Dominion of India. *Consistently with their policy that in the case of any State where the issue of accession has been the subject of dispute, the question if accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the question of the State's accession should be settled by a reference to the people.*

Meanwhile in response to your Highness' appeal for military aid, action has been taken today to send troops of the Indian Army to Kashmir to help your own forces to defend your territory and to protect the lives, property and honour of your people.

My Government and I note with satisfaction that your Highness has decided to invite Sheikh Abdullah to form an Interim Government to work with your Prime Minister.

With kind regards, I remain, Yours sincerely,
October 27, 1947.
Mountbatten of Burma.

ANNEXURE-B1

Text of the order appointing Sheikh as head of administration to deal with Emergency

Chief Secretariat (General Department)

Emergency Administration Order No. 176-H of 1947
30th October, 1947.

We are hereby pleased to command that pending the formation of the Interim Government as agreed upon and in view of the emergency that has arisen, **I charge Sheikh Mohammed Abdullah to function as the Head of the Administration with power to deal with the emergency**.

Sheikh Mohammed Abdullah be sworn in by the Chief Justice or any other Judge of the High Court at Srinagar.

(Sd/-) Hari Singh,
Maharaja.

Emergency Council

The Hon'ble Sheikh Mohammed Abdullah, Head of Emergency Administration.

The Hon'ble Bakshi Ghulam Mohammad, Deputy Head of Administration.

The Hon'ble Mirza Mohammed Afzal Beg, Emergency Officer, Anantnag District.

The Hon'ble G.M. Sadiq, Emergency Officer, Internal Security, Home Guards, Cultural Front.

The Hon'ble Sham Lal Saraf, Emergency Officer, Trader and Supplies.

The Hon'ble Girdhari Lal Dogra, Emergency Officer, Kathua.

The Hon'ble Sardar Budh Singh, Emergency Officer, (Goodwill Mission to Jammu).

The Hon'ble Pt. Jia Lal Kilam, Emergency Officer, Food.

Maulana Mohammed Syed, Emergency Officer, Publicity.

Kh. Gulam Moin-ud-din, Emergency Officer, Communications.

Kh. Abdul Ahad, Emergency Officer (Firewood, Fuel).

Soofi Mohammed Akbar, Emergency Officer, Baramulla.

Peer Mohammed Maqbool, Emergency Officer, Muzaffarabad.

Pt. Kashapa Bandhu, Emergency Officer, Refugees & Rehabilitation.

Mr. Moin-ud-din Hamdani, Emergency Officer, Peace Brigade.

Mr. D.P. Dhar, Secretary, Internal Security & Law and Order.

Mr. J.N. Zutshi, Private Secretary to the Head of Administration and Secretary to the Emergency Council.

Kh. Ahsan Ullah, Emergency Officer, Transport.

Mr. Mohammed Amin., Emergency Officer, Banihal.

Col. Ram Lal, Emergency Officer, Home Guards.

Col. Baldev Singh Pathania, Chief Emergency Officer, Jammu.

Col. Adalat Khan, Chief Administrative Officer, Bhadarwah.

Col. Baldev Singh Samval, Emergency Officer, Border Scouts, Jammu.

ANNEXURE-B2

Proclamation, 5th March, 1948 appointing Sheikh as Prime Minister of J&K

Proclamation of Shreeman Indar Mohinder
Rairajeshwar Maharajadhiraj Shree Harisingh
Ruler of Jammu and Kashmir and Dependencies
5th March, 1948

In accordance with the traditions of my dynasty, I have, from time to time, provided for increasing association of my people with the administration of the State with the object of realising the goal of full Responsible Government at as early a date as possible and in pursuance of that object have, by the Jammu and Kashmir Constitution Act of 1996 (xiv of 1996), established a Constitutional Government with a Council of Ministers, a Legislature with a majority of elected members and an independent Judiciary;

I have noted with gratification and pride the progress so far made and the legitimate desire of my people for the immediate establishment of a fully democratic constitution based on adult franchise with a hereditary Ruler from my dynasty as the Constitutional Head of an Executive responsible to the legislature;

I have already appointed the popular leader of my people Sheikh Mohammed Abdullah as the Head of the Emergency Administration;

It is now my desire to replace the Emergency Administration to a Popular Interim Government and to provide for its powers, duties and functions, pending the formation of a fully democratic Constitution.

I accordingly HEREBY ORDAIN AS FOLLOWS:

My Council of Ministers shall consist of the Prime Minister and such other Ministers as may be appointed on the advice of the Prime Minister. I have by Royal Warrant appointed Sheikh Mohammed Abdullah as the Prime Minister with effect from today.

The Prime Minister and other Ministers shall function as a Cabinet and act on the principle of joint responsibility. **A Dewan appointed by me shall also be a member of the Cabinet.**

I take this opportunity of giving once again a solemn assurance that all sections of my people will have opportunities of service, both civil and military, solely on the basis of their merits and irrespective of creed or community.

My Council of Ministers shall take appropriate steps, as soon as restoration of normal conditions has been completed, **to convene a National Assembly based upon adult suffrage, having due regard to the principle that the number of representatives from each voting area should, as far as practicable, be proportionate to the population of that area.**

The Constitution to be framed by the National Assembly shall provide adequate safeguards for the minorities and contain appropriate provisions guaranteeing for the freedom of conscience, freedom of speech and freedom of assembly.

The National Assembly shall, as soon as the work of framing the new constitution is completed, submit it through the Council of Ministers for my acceptance.

In conclusion, I repeat the hope that the formation of a popular Interim Government and the inauguration, in the near future, of a fully Democratic Constitution will ensure the contentment, happiness and the moral and material advancement of my beloved people.

ANNEXURE-B3

Text of Proclamation of June 1949 as of Maharajadhiraj Hari Singh

"Whereas I have decided for reasons of health to leave the State for a temporary period and to entrust to the Yuvraj Shree Karan Singh Ji Bahadur for that period all my powers and functions in regard to the Government of the State;

Now, therefore, I hereby direct and declare the all powers and functions, whether legislative, executive or judicial, which are exercisable by me in relation to the State and its Government, including, in particular, my right and prerogative of making Laws, of issuing Proclamations, Orders and Ordinances, of remitting, commuting or reducing sentences and of pardoning offenders, shall during the period of my absence from the State be exercisable by Yuvaraj Shree Karan Singh Ji Bahadur."

Sd/- Hari Singh
Maharajadhiraj

ANNEXURE-B4

Article-1 of the Constitution of India

1. (1) India, that is Bharat, shall be a Union of States.

1. [(2) The States and the territories thereof shall be as specified in the First Schedule.]

(3) The territory of India shall comprise:

(a) the territories of the States;

2[(b) the Union territories specified in the First Schedule; and]

(c) such other territories as may be acquired.

SCHEDULE First of Constitution of India

FIRST SCHEDULE

[Articles 1 and 4]

I. THE STATES

Name	*Territories*
1. Andhra Pradesh	The territories specified in sub-section (1) of section 3 of the Andhra State Act, 1953, sub-section (1) of section 3 of the States Reorganisation Act, 1956, the First Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959, and the Schedule to the Andhra Pradesh and Mysore (Transfer of Territory) Act, 1968, but excluding the territories specified in the Second Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959.
2. Assam	The territories which immediately before the commencement of this Constitution were comprised in the Province of Assam, the Khasi States and the Assam Tribal Areas, but excluding the territories specified in the Schedule to the Assam (Alteration of Boundaries) Act, 1951 and the territories specified in sub-section (1) of section 3 of the State of Nagaland Act, 1962 and the territories specified in sections 5, 6 and 7 of the North-Eastern Areas (Reorganisation) Act, 1971.
3. Bihar	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Bihar or were being administered as if they formed part of

	that Province and the territories specified in clause (a) of sub-section (1) of section 3 of the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968, but excluding the territories specified in sub-section (1) of section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956, and the territories specified in clause (b) of sub-section (1) of section 3 of the first mentioned Act and the territories specified in section 3 of the Bihar Reorganisation Act, 2000.
4. Gujarat	The territories referred to in sub-section (1) of section 3 of the Bombay Reorganisation Act, 1960.
5. Kerala	The territories specified in sub-section (1) of section 5 of the States Reorganisation Act, 1956.
6. Madhya Pradesh	The territories specified in sub-section (1) of section 9 of the States Reorganisation Act, 1956 and the First Schedule to the Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959 but excluding the territories specified in section 3 of the Madhya Pradesh Reorganisation Act, 2000.
7. Tamil Nadu	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Madras or were being administered as if they formed part of that Province and the territories specified in section 4 of the States Reorganisation Act, 1956, and the Second Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries)

	Act, 1959, but excluding the territories specified in sub-section (1) of section 3 and sub-section (1) of section 4 of the Andhra State Act, 1953 and the territories specified in clause (b) of sub-section (1) of section 5, section 6 and clause (d) of sub-section (1) of section 7 of the States Reorganisation Act, 1956 and the territories specified in the First Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959.
8. Maharashtra	The territories specified in sub-section (1) of section 8 of the States Reorganisation Act, 1956, but excluding the territories referred to in sub-section (1) of section 3 of the Bombay Reorganisation Act, 1960.
9. Karnataka	The territories specified in sub-section (1) of section 7 of the States Reorganisation Act, 1956 but excluding the territory specified in the Schedule to the Andhra Pradesh and Mysore (Transfer of Territory) Act, 1968.
10. Orissa	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Orissa or were being administered as if they formed part of that Province.
11. Punjab	The territories specified in section 11 of the States Reorganisation Act, 1956 and the territories referred to in Part II of the First Schedule to the Acquired Territories (Merger) Act, 1960 but excluding the territories referred to in Part II of the First Schedule to the

	Constitution (Ninth Amendment) Act, 1960 and the territories specified in sub-section (1) of section 3, section 4 and sub-section (1) section 5 of the Punjab Reorganisation Act, 1966.
12. Rajasthan	The territories specified in section 10 of the States Reorganisation Act, 1956 but excluding the territories specified in the First Schedule to the Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959.
13. Uttar Pradesh	The territories which immediately before the commencement of this Constitution were either comprised in the Province known as the United Provinces or were being administered as if they formed part of that Province, the territories specified in clause (b) of sub-section (1) of section 3 of the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968, and the territories specified in clause (b) of sub-section (1) of section 4 of the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979, but excluding the territories specified in clause (a) of sub-section (1) of section 3 of the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968, and the territories specified in section 3 of the Uttar Pradesh Reorganisation Act, 2000 and the territories specified in clause (a) of sub-section (1) of section 4 of the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979.
14. West Bengal	The territories which immediately before the commencement of this

	Constitution were either comprised in the Province of West Bengal or were being administered as if they formed part of that Province and the territory of Chandernagore as defined in clause (c) of section 2 of the Chandernagore (Merger) Act, 1954 and also the territories specified in sub-section (1) of section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956.
15. Jammu and Kashmir	The territory which immediately before the commencement of this Constitution was comprised in the Indian State of Jammu and Kashmir.
16. Nagaland	The territories specified in sub-section (1) of section 3 of the State of Nagaland Act, 1962.
17. Haryana	The territories specified in sub-section (1) of section 3 of the Punjab Reorganisation Act, 1966 and the territories specified in clause (a) of sub-section (1) of section 4 of the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979, but excluding the territories specified in clause (v) of sub-section (1) of section 4 of that Act.
18. Himachal Pradesh	The territories which immediately before the commencement of this Constitution were being administered as if they were Chief Commissioners' Provinces under the names of Himachal Pradesh and Bilaspur and the territories specified in sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966.
19. Manipur	The territory which immediately before the commencement of this Constitution was being administered as if it were a

	Chief Commissioner's Province under the name of Manipur.
20. Tripura	The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Tripura.
21. Meghalaya	The territories specified in section 5 of the North-Eastern Areas (Reorganisation) Act, 1971.
22. Sikkim	The territories which immediately before the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975, were comprised in Sikkim.
23. Mizoram	The territories specified in section 6 of the North-Eastern Areas (Reorganisation) Act, 1971.
24. Arunachal Pradesh	The territories specified in section 7 of the North-Eastern Areas (Reorganisation) Act, 1971.
25. Goa	The territories specified in section 3 of the Goa, Daman and Diu Reorganisation Act, 1987.
26. Chhattisgarh	The territories specified in section 3 of the Madhya Pradesh Reorganisation Act, 2000.
27. Uttaranchal	The territories specified in section 3 of the Uttar Pradesh Reorganisation Act, 2000.
28. Jharkhand	The territories specified in section 3 of the Bihar Reorganisation Act, 2000.

II. THE UNION TERRITORIES

Name	*Extent*
1. Delhi	The territory which immediately before the commencement of this Constitution

	was comprised in the Chief Commissioner's Province of Delhi.
2. The Andaman and Nicobar Islands	The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of the Andaman and Nicobar Islands.
3. Lakshadweep	The territory specified in section 6 of the States Reorganisation Act, 1956.
4. Dadra and Nagar Haveli	The territory which immediately before the eleventh day of August, 1961 was comprised in Free Dadra and Nagar Haveli.
5. Daman and Diu	The territories specified in section 4 of the Goa, Daman and Diu Reorganisation Act, 1987.
6. Pondicherry	The territories which immediately before the sixteenth day of August, 1962, were comprised in the French Establishments in India known as Pondicherry, Karikal, Mahe and Yanam.

ANNEXURE-B5

Appendix II – Restatement, with Reference to the Present Text of the Constitution

Appendix II

RESTATEMENT, WITH REFERENCE TO THE PRESENT TEXT OF THE CONSTITUTION, OF THE EXCEPTIONS AND MODIFICATIONS SUBJECT TO WHICH THE CONSTITUTION APPLIES TO THE STATE OF JAMMU AND KASHMIR

[Note—The exceptions and modifications subject to which the Constitution applies to the State of Jammu and Kashmir are either those provided in the Constitution (Application to Jammu and Kashmir) Order, 1954 or those consequential to the non-application to the State of Jammu and Kashmir of certain amendments to the Constitution. All the exceptions and modifications which have a practical significance are included in the restatement which is only for the facility of quick reference. For ascertaining the exact position, reference will have to be made to the Constitution (Application to Jammu and Kashmir) Order, 1954 and to the text of the Constitution on the 20th of June, 1964, as amended by the subsequent amendments to the Constitution mentioned in clause 2 of the said Order.]

(1) THE PREAMBLE.

(a) In the first paragraph, omit "SOCIALIST SECULAR";

(b) In the penultimate paragraph, omit "and integrity".

(2) PART I.

Article 3—

(a) Add the following further proviso, namely:

"Provided further that no Bill providing for increasing or diminishing the area of the State of Jammu and Kashmir or altering the name or boundary of that State shall be introduced in the Parliament without the consent of the Legislature of that State."

(b) Omit Explanation I and Explanation II.

(3) PART II.

(a) This Part shall be deemed to have been applicable in relation to the State of Jammu and Kashmir as from the 26th day of January, 1950.

(b) Article 7—Add the following further proviso, namely:

"Provided further that nothing in this article shall apply to a permanent resident of the State of Jammu and Kashmir who, after having so migrated to the territory now included in Pakistan, returns to that territory of that State under a permit for resettlement in that State or permanent return issued by or under the authority of any law made by the Legislature of that State, and every such person shall be deemed to be a citizen of India."

(4) PART III.

(a) Article 13—References to the commencement of the Constitution shall be construed as references to the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954 (C.O. 48), i.e., the 14th day of May, 1954.

(c) Article 16—In clause (3), reference to the State shall be construed as not including a reference to the State of Jammu and Kashmir.

(d) Article 19—

(A) In clause (1)—

(i) in sub-clause (e), omit "and" at the end;

(ii) after sub-clause (e), insert the following clause, namely:

"(f) to acquire, hold and dispose of property; and"; (B) in clause (5), for "sub-clauses (d) and (e)", substitute "sub-clauses (d), (e) and (f)".

(e) Article 22—In clauses (4) and (7), for "Parliament", substitute "the Legislature of the State".

(f) Article 30—Omit clause (1A).

(g) After article 30, insert the following, namely:

"Right to Property

31. Compulsory acquisition of property—(1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law; and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash:

Provided that in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1) of Article 30, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a Corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

(2B) Nothing in Sub-clause (f) of Clause (1) of Article 19 shall affect any such law as is referred to in Clause (2).

(5) Nothing in Clause 2 shall affect—

(a) the provisions of any existing law; or

(b) the provisions of any law which the State may hereafter make—

- (i) for the purpose of imposing or levying any tax or penalty; or
- (ii) for the promotion of public health or the prevention of danger to life or property; or
- (iii) with respect to property declared by law to be evacuee property."

(h) After article 31, omit the following sub-heading, namely: "Saving of Certain Laws"

(i) Article 31A—

(A) In Clause (1)—

- (i) for "Article 14 or Article 19", substitute "Article 14, Article 19 or Article 31";
- (ii) omit the first proviso to Clause (1);
- (iii) in the second proviso omit "further";

(B) in clause (2), for Sub-clause (a), substitute the following Sub-clause, namely:

(a) "estate" shall mean land which is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes—

- (i) sites of buildings and other structures on such land;
- (ii) trees standing on such land;
- (iii) forest land and wooded waste;
- (iv) area covered by or fields floating over water;
- (v) sites of jandars and gharats;
- (vi) any jagir, inam, muafi or mukarrari or other similar grant,

but does not include—

(i) the site of any building in any town, or town area or village abadi or any land appurtenant to any such building or site;

(ii) any land which is occupied as the site of a town or village; or

(iii) any land reserved for building purposes in a municipality or notified area or cantonment or town area or any area for which a town planning scheme is sanctioned;

(j) Article 31C—This article is not applicable to the State of Jammu and Kashmir.

(k) Article 32—Omit Clause (3).

(l) Article 35—

(A) References to the commencement of the Constitution shall be construed as references to the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954 (C.O. 48), i.e., the 14th day of May, 1954;

(B) in Clause (a) (i), omit "Clause (3) of Article 16, Clause (3) of article 32";

(C) after Clause (), add the following clause, namely:

"(c) no law with respect to preventive detention made by the Legislature of the State of Jammu and Kashmir, whether before or after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, shall be void on the ground that it is inconsistent with any of the provisions of this Part, but any such law shall, to the extent of such inconsistency, cease to have effect on the expiration of twenty-five years from the commencement of the said Order, except as respects things done or omitted to be done before the expiration thereof."

(m) After article 35, add the following article, namely:

"35A. Saving of laws with respect to permanent residents and their rights.—Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State—

(a) defining the classes of persons who are, or shall be, permanent residents of the State of Jammu and Kashmir; or

(b) conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects—

(i) employment under the State Government;
(ii) acquisition of immovable property in the State;
(iii) settlement in the State; or
(iv) right to scholarships and such other forms of aid as the State Government may provide, shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part."

(5) PART IV—This part is not applicable to the State of Jammu and Kashmir.

(6) PART IVA—This part is not applicable to the State of Jammu and Kashmir.

(7) PART V—

(a) Article 55—

(A) For the purposes of this article, the population of the State of Jammu and Kashmir shall be deemed to be sixty-three lakhs;

(B) in the Explanation omit the proviso.

(b) Article 81—For clauses (2) and (3), substitute the following clauses, namely:

"(2) For the purposes of Sub-clause (a) of Clause (1)—

(a) there shall be allotted to the State six seats in the House of the People;
(b) the State shall be divided into single-member territorial constituencies by the Delimitation Commission constituted under the Delimitation Act, 1972, in accordance with such procedure as the Commission may deem fit;
(c) the constituencies shall, as far as practicable, be geographically compact areas, and in delimiting them, regard shall be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience; and

(d) the constituencies, into which the State is divided, shall not comprise the area under the occupation of Pakistan.

(3) Nothing in Clause (2) shall affect the representation of the State in the House of the People until the dissolution of the House existing on the date of publication in the Gazette of India of the final order or orders of the Delimitation Commission relating to the delimitation of parliamentary constituencies under the Delimitation Act, 1972.

(4) (a) The Delimitation Commission shall associate with itself for the purpose of assisting it in its duties in respect of the State, five persons who shall be members of the House of the People representing the State.

(b) The persons to be so associated from the State shall be nominated by the Speaker of the House of the People having due regard to the composition of the House.

(c) The first nominations to be made under Sub-clause (b) shall be made by the Speaker of the House of the People within two months from the commencement of the Constitution (Application to Jammu and Kashmir) Second Amendment Order, 1974.

(d) None of the associate members shall have a right to vote or to sign any decision of the Delimitation Commission.

(e) If owing to death or resignation, the office of an associate member falls vacant, it shall be filled as soon as may be practicable by the Speaker of the House of the People and in accordance with the provisions of Sub-clauses (a) and (b)."

(c) Article 82—Omit the second and third provisos.

(d) Article 105—In clause (3), for "shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978" substitute "shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution".

(e) For Article 132, substitute the following article, namely:

'132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases—(1) An appeal shall lie to the Supreme Court from any judgement, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution.

(2) Where the High Court has refused to give such a certificate, the Supreme Court may, if it is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution, grant special leave to appeal from such judgement, decree or final order.

(3) Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided and, with the leave of the Supreme Court, on any other ground.

Explanation—For the purposes of this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.'

(f) Article 133—

(A) In clause (1), omit "under article 134A";

(B) after clause (1), insert the following clause, namely:

'(1A) The provisions of section 3 of the Constitution (Thirtieth Amendment) Act, 1972, shall apply in relation to the State of Jammu and Kashmir subject to the modification that references therein to "this Act", "the commencement of this Act", "this Act had not been passed" and "as amended by this Act" shall be construed respectively as references to "the Constitution (Application to Jammu and Kashmir) Second Amendment Order, 1974", "the commencement of the said Order", "the said Order had not been made" and "as it stands after the commencement of the said Order".'

(g) Article 134—

(A) In Clause (1), in Sub-clause (c), omit "under article 134A";

(B) in Clause (2), after "Parliament may" insert "on the request of the Legislature of the State".

(h) Articles 134A, 135, 139 and 139A—These Articles are not applicable to the State of Jammu and Kashmir.

(i) Article 145—In Clause (1), omit Sub-clause (cc).

(j) Article 150—For "as the President may, on the advice of the Comptroller and Auditor-General of India, prescribe" substitute "as the Comptroller and Auditor-General of India may, with the approval of the President prescribe".

(8) PART VI.

(a) Omit Articles 153 to 217, Article 219, Article 221, Articles 223, 224, 224A and 225, Articles 227 to 233, Article 233A and Articles 234 to 237.

(b) Article 220—References to the commencement of the Constitution shall be construed as references to the commencement of the Constitution (Application to Jammu and Kashmir) Amendment Order, 1960, i.e., the 26th January, 1960.

(c) Article 222—After Clause (1), insert the following Clause, namely:

"(1A) Every such transfer from the High Court of Jammu and Kashmir or to that High Court shall be made after consultation with the Governor."

(d) Article 226—

(A) Renumber Clause (2) as Clause (1A);

(B) omit Clause (3);

(C) renumber Clause (4) as Clause (2); and in Clause (2) as so renumbered, for "this Article" substitute "Clause (1) or Clause (1A)".

(9) PART VIII—This part is not applicable to the State of Jammu and Kashmir.

(10) PART X—This part is not applicable to the State of Jammu and Kashmir.

(11) PART XI.

(a) Article 246—

(A) in Clause (1), for "Clauses (2) and (3)" substitute "Clause (2)";

(B) in Clause (2), omit "Notwithstanding anything in Clause (3)";

(C) omit Clauses (3) and (4).

(b) For Article 248, substitute the following article, namely:

'248. Residuary powers of legislation—Parliament has exclusive power to make any law with respect to—

(a) prevention of activities involving terrorist acts directed towards overawing the Government as by law established or striking terror in the people or any section of the people or alienating any section of the people or adversely affecting the harmony amongst different sections of the people;

(aa) prevention of other activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about cession of a part of the territory of India or secession of a part of the territory of India from the Union or causing insult to the Indian National Flag, the Indian National Anthem and this Constitution; and

(b) taxes on—

(i) foreign travel by sea or air;
(ii) inland air travel;
(iii) postal articles, including money orders, phonograms and telegrams.

Explanation—In this article, "terrorist act" means any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or any other substances (whether biological or otherwise) of a hazardous nature.'

(bb) Article 249, in clause (1), for "any matter enumerated in the State List specified in the resolution", substitute "any matter specified in the resolution, being a matter which is not enumerated in the Union List or in the Concurrent List".

(c) Article 250—For "to any of the matters enumerated in the State List" substitute "also to matters not enumerated in the Union List".

(d) Omit Clause (d).

(e) Article 253—Add the following proviso, namely:

"Provided that after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, no decision affecting the disposition of the State of Jammu and Kashmir shall be made by the Government of India without the consent of the Government of that State."

(f) Omit Article 255.

(g) Article 256—Renumber this article as clause (1) thereof, and add the following new Clause thereto, namely:

"(2) The State of Jammu and Kashmir shall so exercise its executive power as to facilitate the discharge by the Union of its duties and responsibilities under the Constitution in relation to that State; and in particular, the said State shall, if so required by the Union, acquire or requisition property on behalf and at the expense of the Union, or if the property belongs to the State, transfer it to the Union on such terms as may be agreed, or in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India."

(h) Article 261—In Clause (2), omit "made by Parliament".

(12) PART XII.

(a) Articles 266, 282, 284, 298, 299 and 300—In these articles, references to the State or States shall be construed as not including references to the State of Jammu and Kashmir;

(b) omit Clause (2) of Article 267, Article 273, Clause (2) of Article 283 and Article 290;

(c) Articles 277 and 295—In these articles, references to the commencement of the Constitution shall be construed as references to the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, i.e., the 14th day of May, 1954.

(d) Omit the sub-heading "CHAPTER IV—RIGHT TO PROPERTY" and Article 300A.

(13) PART XIII.

In Article 303, in Clause (1), omit "by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule".

(14) PART XIV.

Except in Article 312, reference to "State" in this Part does not include the State of Jammu and Kashmir.

(15) PART XIVA.

This part is not applicable to the State of Jammu and Kashmir.

(16) PART XV—

(a) Article 324—In Clause (1), the reference to the Constitution shall, in relation to elections to either House of the Legislature of Jammu and Kashmir, be construed as a reference to the Constitution of Jammu and Kashmir.

(b) Articles 325, 326 and 327—In these articles, the references to a State shall be construed as not including a reference to the State of Jammu and Kashmir.

(c) Omit Article 328.

(d) Article 329—

(A) Reference to a State shall be construed as not including a reference to the State of Jammu and Kashmir;

(B) omit "or Article 328".

(17) PART XVI—

Original clause (a) omitted and Clauses (b) and (c) relettered as Clauses (a) and (b).

(a) Omit Articles 331, 332, 333, 336 and 337.

(b) Articles 334 and 335—References to the State or the States shall be construed as not including references to the State of Jammu and Kashmir.

(c) Article 339, in Clause (1), omit "the administration of the Scheduled Areas and".

(18) PART XVII—The provisions of this Part shall apply to the State of Jammu and Kashmir only insofar as they relate to—

(i) the official language of the Union;

(ii) the official language for communication between one State and another, or between a State and the Union; and

(iii) the language of the proceedings in the Supreme Court.

(19) PART XVIII.

(a) For Article 352, substitute the following article, namely:

"352. Proclamation of Emergency—(1) If the President is satisfied that a grave emergency exists, whereby the security of

India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect.

(2) A proclamation issued under Clause (1)—

(a) may be revoked by a subsequent Proclamation;

(b) shall be laid before each House of Parliament;

(c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days, a resolution approving the Proclamation has been also passed by the House of the people.

(3) A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.

(4) The power conferred on the President by this article shall include the power to issue different Proclamations on different grounds, being war or external aggression or internal disturbance or imminent danger of war or external aggression or internal disturbance, whether or not there is a Proclamation already issued by the President under clause (1) and such Proclamation is in operation.

(5) Notwithstanding anything in the Constitution—

(a) the satisfaction of the President mentioned in clause (1) and clause (3) shall be final and conclusive and shall not be questioned in any court on any ground;

(b) subject to the provisions of Clause (2), neither the Supreme Court nor any other Court shall have jurisdiction to entertain any question, on any ground, regarding the validity of—

(i) a declaration made by Proclamation by the President to the effect stated in clause (1); or

(ii) the continued operation of such Proclamation.

(6) No Proclamation of Emergency made on grounds only of internal disturbance or imminent danger thereof shall have effect in relation to the State of Jammu and Kashmir (except as respects Article 354) unless—

(a) it is made at the request or with the concurrence of the Government of that State; or

(b) where it has not been so made, it is applied subsequently by the President to that State at the request or with the concurrence of the Government of that State."

(b) Article 353—Omit the proviso.

(c) Article 356—

(A) In Clause (1), reference to provisions or provisions of this Constitution shall, in relation to the State of Jammu and Kashmir, be construed as including references to provisions or provision of the Constitution of Jammu and Kashmir;

(B) in clause (4)—

(i) for the opening portion, substitute the following, namely:

"A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under Clause (3)";

(ii) after the second proviso, the following proviso shall be inserted, namely:

'Provided also that in the case of the Proclamation issued under Clause (1) on the 18th day of July, 1990 with respect to the State of Jammu and Kashmir, the reference in the fist proviso to this clause to "three years" shall be construed as a reference to "seven years."

(C) for Clause (5), substitute the following clause, namely:

"(5) Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in Clause (1) shall be final and conclusive and shall not be questioned in any court on any ground."

(d) Article 357—For Clause (2), substitute the following Clause, namely:

"(2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in Sub-clause (a) of Clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under Article 356, have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period, unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by Act of the appropriate Legislature."

(e) For Article 358, substitute the following article, namely:

"358. Suspension of provisions of Article 19 during emergencies—While a Proclamation of Emergency is in operation, nothing in Article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect."

(f) Article 359—

(A) in Clause (1) omit "(except Articles 20 and 21)";

(B) in Clause (1A)—

(i) omit "(except Articles 20 and 21)";

(ii) omit the proviso;

(C) omit Clause (1B);

(D) in Clause (2), omit the proviso.

(g) omit Article 360.

(20) PART XIX.

(a) Article 361A—This article is not applicable to the State of Jammu and Kashmir.

(b) Omit Article 365.

(c) Article 367—After Clause (3), add the following Clause, namely:

"(4) For the purposes of this Constitution as it applies in relation to the State of Jammu and Kashmir—

(a) references to this Constitution or to the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied in relation to the said State;

(aa) references to the person for the time being recognised by the President on the recommendation of the Legislative Assembly of the State as the Sadar-e-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office, shall be construed as references to the Governor of Jammu and Kashmir;

(b) references to the Government of the said State shall be construed as including references to the Governor of Jammu and Kashmir acting on the advice of his Council of Ministers:

Provided that in respect of any period prior to the 10th day of April, 1965, such references shall be construed as including references to the Sadar-e-Riyasat acting on the advice of his Council of Ministers;

(c) references to a High Court shall include references to the High Court of Jammu and Kashmir;

(d) references to the permanent residents of the said State shall be construed as meaning persons who, before the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, were recognised as State subjects under the laws in force in the State or who are recognised by any law made by the Legislature of the State as permanent residents of the State; and

(e) references to a Governor shall include references to the Governor of Jammu and Kashmir:

Provided that in respect of any period prior to the 10th day of April, 1965, such references shall be construed as references to the person recognised by the President as the Sadar-e-Riyasat of Jammu and Kashmir and as including references to any person recognised by the President as being competent to exercise the powers of the Sadar-e-Riyasat.

(21) PART XX.

Article 368—

(a) in clause (2), add the following further proviso, namely:

"Provided further that no such amendment shall have effect in relation to the State of Jammu and Kashmir unless applied by order of the President under clause (1) of Article 370."

(b) omit Clauses (4) and (5) and after Clause (3) add the following Clause, namely:

"(4) No law made by the Legislature of the State of Jammu and Kashmir seeking to make any change in or in the effect of any provision of the Constitution of Jammu and Kashmir relating to:

(a) appointment, powers, functions, duties, emoluments, allowances, privileges or immunities of the Governor; or

(b) superintendence, direction and control of elections by the Election Commission of India, eligibility for inclusion in the electoral rolls without discrimination, adult suffrage and composition of the Legislative Council, being matters specified in sections 138, 139, 140 and 50 of the Constitution of Jammu and Kashmir, shall have any effect unless such law has, after having been reserved for the consideration of the President, received his assent."

(22) PART XXI—

(a) Omit Articles 369, 371, 371A, 372A, 373 and Articles 376 to 378A and 392.

(b) Article 372—

(A) Omit Clauses (2) and (3);

(B) references to the laws in force in the territory of India shall include references to hidayats, ailans, ishtihars, circulars, robkars, irshads, yadashts, State Council Resolutions, Resolutions of the Constituent Assembly, and other instruments having the force of law in the territory of the State of Jammu and Kashmir;

(C) references to the commencement of the Constitution shall be construed as references to the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954 (C.O. 48), i.e., the 14th day of May, 1954.

(c) Article 374—

(A) Omit Clauses (1), (2), (3) and (5);

(B) in Clause (4), the reference to the authority functioning as the Privy Council of a State shall be construed as a reference to the Advisory Board constituted under the Jammu and Kashmir Constitution Act, Samvat 1996, and references to the commencement of the Constitution shall be construed as references to the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, i.e., the 14th day of May, 1954.

(23) PART XXII—Omit articles 394 and 395.

(24) THIRD SCHEDULE—Omit forms V, VI, VII and VIII.

(25) FIFTH SCHEDULE—This Schedule is not applicable to the State of Jammu and Kashmir,

(26) SIXTH SCHEDULE—This Schedule is not applicable to the State of Jammu and Kashmir.

(27) SEVENTH SCHEDULE—

(a) List I —Union List:

(A) Omit entry 2A;

(B) for entry 3, substitute the following entry, namely:

"3. Administration of cantonments."

(C) omit entries 8, 9, 34 and 79;

(D) in entry 72, the reference to the States shall be construed—

(i) in relation to appeals to the Supreme Court from any decision or order of the High Court of the State of Jammu and Kashmir made in an election petition, whereby an election to either House of the Legislature of that State has been called in question, as including a reference to the State of Jammu and Kashmir;

(ii) in relation to other matters, as not including a reference to that State;

(E) in entry 81, omit "Inter-State migration";

(F) for entry 97, substitute the following entry, namely:

'97. Prevention of activities—

(a) involving terrorist acts directed towards overawing the Government as by law established or striking terror in the people or any section of the people or alienating any section of the people or adversely affecting the harmony amongst different sections of the people;

(b) directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about secession of a part of the territory of India or secession of a part of the territory of India from the Union or causing insult to the Indian National flag, the Indian National Anthem and this Constitution; taxes on foreign travel by sea or air, on inland air travel and on postal articles, including money orders, phonograms and telegrams.

Explanation—In this entry, "terrorist act" has the same meaning as in the Explanation to Article 248.'

(b) Omit List II—State List.

(c) List III—Concurrent List—

(A) For entry 1, substitute the following entry, namely:

"1. Criminal law (excluding offences against laws with respect to any of the matters specified in List I and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power) insofar as such criminal law relates to offences against laws with respect to any of the matters specified in this List."

(B) for entry 2, substitute the following entry, namely:

"2. Criminal procedure (including prevention of offences and constitution and organisation of criminal courts, except the Supreme Court and the High Court) insofar as it relates to—

(i) offences against laws with respect to any matters being matters with respect to which Parliament has power to make laws; and

(ii) administration of oaths and taking of affidavits by diplomatic and consular officers in any foreign country;

(C) omit entry 3, entries 5 to 10 (both inclusive), entries 14, 15, 17, 20, 24, 27, 28, 29, 31, 32, 37, 38, 41 and 44;

(D) entries 11A, 17A, 17B, 20A and 33A are not applicable to the State of Jammu and Kashmir;

(E) for entry 12, substitute the following entry, namely:

"12. Evidence and oaths insofar as they relate to—

(i) administration of oaths and taking of affidavits by diplomatic and consular officers in any foreign country; and

(ii) any other matter being matters with respect to which Parliament has power to make laws;

(F) for entry 13, substitute the following entry, namely:

"13. Civil procedure insofar as it relates to administration of oaths and taking of affidavits by diplomatic and consular officers in any foreign country."

(G) for entry 25, substitute the following entry, namely:

"25. Vocational and technical training of labour."

(H) for entry 30, substitute the following entry, namely:

"30. Vital statistics insofar as they relate to births and deaths including registration of births and deaths."

(I) for entry 42, substitute the following entry, namely:

"42 Acquisition and requisitioning of property, so far as regards acquisition of any property covered by entry 67 of List I or entry 40 of List III or of any human work of art which has artistic or aesthetic value."

(J) in entry 45, for "List II or List III" substitute "this List".

(28) NINTH SCHEDULE—

(a) After entry 64, add the following entries, namely:

"64A. The Jammu and Kashmir State Kuth Act (No. 1 of Samvat 1978).

64B. The Jammu and Kashmir Tenancy Act (No. II of Samvat 1980).

64C. The Jammu and Kashmir Alienation of Land Act (No. V of Samvat 1995).

64D. The Jammu and Kashmir Big Landed Estates Abolition Act (No. XVII of Samvat 2007).

64E. Order No. 6-H of 1951, dated the 10th of March, 1951, regarding Resumption of Jagirs and other assignments of land revenue, etc.

64F. The Jammu and Kashmir Restitution of Mortgaged Properties Act, 1976 (Act XIV of 1976).

64G. The Jammu and Kashmir Debtors' Relief Act, 1976 (Act XV of 1976)."

(b) entries 65 to 86 are not applicable to the State of Jammu and Kashmir;

(c) after entry 86, insert the following entry, namely:

"87. The Representation of the People Act, 1951 (Central Act 43 of 1951), the Representation of the People (Amendment) Act, 1974 (Central Act 58 of 1974) and the Election Laws (Amendment) Act, 1975 (Central Act 40 of 1975)."

(d) after entry 91, insert the following entry, namely:

"92. The maintenance of Internal Security Act, 1971 (Central Act 26 of 1971)."

(e) after entry 129, insert the following entry, namely:

"130. The Prevention of Publication of Objectionable Matter Act, 1976 (Central Act 27 of 1976)."

(f) after insertion of the entries 87, 92 and 130 as indicated above, renumber entries 87 to 188 as entries 65 to 166 respectively.

(29) TENTH SCHEDULE—

(a) for the brackets, words and figures "[Articles 102(2) and 191(2)]", the brackets, word and figures "[Article 102(2)]" shall be substituted;

(b) in Clause (a) of paragraph 1, the words "or the Legislative Assembly or, as the case may be, either House of the Legislature of a State" shall be omitted;

(c) in paragraph 2—

(i) in Sub-paragraph (1), in Sub-clause (ii) of Clause (b) of the Explanation, the words and figures "or, as the case may be, Article 188" shall be omitted;

(ii) in sub-paragraph (3), the words and figures "or, as the case may be, Article 188" shall be omitted;

(iii) in sub-paragraph (4), the reference to the commencement of the Constitution (Fifty-second Amendment) Act, 1985 shall be construed as a reference to the commencement of the Constitution (Application to Jammu and Kashmir) Amendment Order, 1989;

(d) in paragraph 5, the words "or the Chairman or the Deputy Chairman of the Legislative Council of a State or the

Speaker or the Deputy Speaker of the Legislative Assembly of a State" shall be omitted;

(e) in sub-paragraph (2) of paragraph 6, the words and figures "or, as the case may be, proceedings in the Legislature of a State within the meaning of Article 212" shall be omitted;

(f) in sub-paragraph (3) of paragraph 8, the words and figures "or, as the case may be, Article 194," shall be omitted.

7. Chandigarh The territories specified in section 4 of the Punjab Reorganisation Act, 1966.

ANNEXURE-B6

Text of the Proclamation issued by Yuvraj Karan Singh Regent of the Jammu and Kashmir State on 1st May, 1951.

Whereas it is the general desire of the people of the State of Jammu and Kashmir that a Constituent Assembly should be brought into being for the purpose of framing a Constitution for the State;

Whereas it is commonly felt that the convening of the Assembly can no longer be delayed without detriment to the future well-being of the State;

And whereas terms of the proclamation of the Maharaja dated 5th March, 1948 in regard to the convening of a National Assembly as contained in clauses 4 to 6 of the operative part thereof do not meet the requirements of the present situation;

I, Yuvraj Karan Singh, do hereby direct as follows:

1. A Constituent Assembly consisting of representatives of the people, elected on the basis of adult franchise shall be constituted forthwith for the purpose of framing a constitution for the State of Jammu and Kashmir;
2. For the purpose of the said elections, the State shall be divided into a number of territorial constituencies, each containing a population of 40,000 or as near thereto as possible and each electing one member. A delimitation committee shall be set up by the Government to make recommendations as to the number of constituencies and the limits of each constituency;

3. Elections to the Constituent Assembly shall be on the basis of adult franchise, that is to say, every person, who is a State subject of any class, is not less than twenty-one years of age on the first day of March, has been a resident in the constituency for such period as may be prescribed by the rules, shall be entitled to register in the electoral rolls of that constituency, provided that any person, who is of unsound mind or has been so declared by a competent court, shall be disqualified for registration;
4. The vote at the election shall be direct and by secret ballot;
5. The Constituent Assembly shall have power to act notwithstanding any vacancy of the Membership thereof;
6. The Constituent Assembly shall frame its own agenda and make rules for the governing of its procedure and the conduct of its business.

The Government shall make such rules and issue such instructions and orders as may be necessary to give effect to the terms of this proclamation.

ANNEXURE-B7

J&K Constituent Assembly

Members of J&K Constituent Assembly

S. No.	*Members*	*Constituency*
1.	Maulana Mohammad Sayeed	Masudi Amira Kadal
2.	Sheikh Mohammed Abdullah	Hazratbal
3.	Bakshi Ghulam Mohammed	Safa Kadal
4.	Mirza Mohammed Afzal Beg	Anantnag
5.	Girdhari Lal Dogra	Jasmergarh
6.	Sham Lal Saraf Habba	Kadal
7.	Abdul Aziz Shawl	Rajouri
8.	Abdul Gani Trali	Rajpora
9.	Abdul Gani Goni	Bhalesa
10.	Syed Abdul Qadus	Biruwa

11.	Bakshi Abdul Rashid	Charar-e-Sharief
12.	Abdul Kabir Khan	Bandipora (Gurez)
13.	Abdul Khalid	Saniwara
14.	Syed Alauddin Gilani	Handwara
15.	Assadullah	Mir Ramban
16.	Bhagat Ram Lander	Tikri
17.	Bhagat Chhajju Ram	Ranbirsinghpora
18.	Sardar Chela Singh	Chhamb
19.	Chuni Lal Kotwal	Bhaderwah
20.	Durga Prashad Dhar	Kulgam
21.	Ghulam Ahmad Mir	Dachinpara
22.	Master Ghulam Ahmed	Haveli
23.	Ghulam Ahmad Dev	Doda
24.	Pirzada Ghulam Gilani	Pampore
25.	Ghulam Hassan Khan	Narwah
26.	Ghulam Hassan Bhat	Nandi
27.	Ghulam Hassan Malik	Devasar
28.	Pir Ghulam Mohammad Masoodi	Tral
29.	Ghulam Mohammad Sadiq	Tankipora
30.	Mirza Ghulam Mohammad Beg	Naubag Brang Valley
31.	Ghulam Mohammad Butt	Pattan
32.	Ghulam Mohi-ud-Din Khan	Khansahib
33.	Ghulam Mohi-ud-Din Hamdani	Khanyar
34.	Mirwaiz Ghulam Nabi Hamdani	Zaddibal
35.	Ghulam Nabi Wani	Darihgam
36.	Ghulam Nabi Wani	Lolab
37.	Ghulam Qadir Bhat	Kangan
38.	Ghulam Qadir Masala	Drugmulla
39.	Ghulam Rasool Sheikh	Shopian
40.	Ghulam Rasool	Kar Hamal
41.	Ghulam Rasool Kraipak	Kishtwar
42.	Hakim Habibullah Khan	Sopore
43.	Hem Raj Jandial	Ramnagar
44.	Sardar Harbans Singh Azad	Baramulla
45.	Syed Ibrahim Shah	Kargil
46.	Ishar Devi Maini	Jammu city (Northern)

47.	Janki Nath Kakroo	Kothar
48.	Jamal-ud-Din	Drahal
49.	Maulvi Jamaitali Shah	Mendhar
50.	Kushak Bakula	Leh
51.	Kishen Dev Sethi	Nowshera
52.	Sardar Kulbir Singh	Poonch city
53.	Mohammad Afzal Khan	Uri
54.	Sheikh Mohammad Akbar	Tangmarg
55.	Mohammad Anwar Shah	Karnah
56.	Mohammad Ayub Khan	Arnas
57.	Syed Mohammad Jalali	Badgam
58.	Pir Mohammed Maqbool Shah	Ramhal
59.	Syed Mir Qasim Doru	Shahabad
60.	Mubarik Shah	Magam
61.	Mansukh Rai	Reasi
62.	Mahant Ram	Basohli
63.	Moti Ram Baigra	Udhampur
64.	Mahasha Nahar Singh	Bishnah
65.	Noor Dar	Kowapora
66.	Noor-ud-Din Sufi	Ganderbal
67.	Major Piara Singh	Kathua
68.	Ram Chand Khajuria	Billawar
69.	Lala Ram Piara Saraf	Samba
70.	Ram Devi	Jammu city (Southern)
71.	Ram Rakha Mal	Kahanachak
72.	Wazir Ram Saran Jandrah	Garota
73.	Ram Lal	Akhnoor
74.	Sagar Singh	Parmandal
75.	Sona Ullah Sheikh	Pulwama

Members of National Level Constituent Assembly from Jammu and Kashmir

1. Sheikh Mohammed Abdullah.
2. Mirza Mohammad Afzal Beg.
3. Maulana Mohammad Syed Masudi.
4. Moti Ram Baigra.

ANNEXURE-B8

Text of Speech by Hon'ble Sheikh Mohammed to the Constituent Assembly

Extract:

We must remember that our struggle for power has now reached its successful climax in convening of this Constituent Assembly. It is for you to translate the vision of New Kashmir into a reality, and I would remind you of its opening words, which will inspire our labours:

"We the people of Jammu & Kashmir, Ladakh and the Frontier regions, including Poonch and Chenani Illaqas commonly known as Jammu and Kashmir State in order to perfect our union in the fullest equality and self-determination to raise ourselves and our children forever from the abyss of oppression and poverty, degradation and superstition, from medieval darkness and ignorance, into the sunlit valleys of plenty, ruled by freedom, science and honest toil, in worthy participation of the historic resurgence of the peoples of East, and the working masses of the world, and in determination to make this our country a dazzling gem on the snowy bosom of Asia, to propose and propound the following constitution of our State.

This was passed at the 1944 session of the National Conference in Srinagar. Today, in 1951, embodying aspirations, men and women from the four corners of the state in this Constituent Assembly have become the repository of its sovereign authority. This Assembly, invested with the authority of a constituent body, will be the fountain-head of basic laws laying the foundation of a just social order and safeguarding the democratic rights of all the citizens of the State.

You are the sovereign authority in this State of Jammu and Kashmir; what you decide has the irrevocable force of law. The basic democratic principle of sovereignty of the nation embodied ably in the American and French Constitutions, is once again given shape in our midst. I shall quote the famous words of Article 3 of the French Constitution of 1791.

"The source of all sovereignty resides fundamentally in the nation... Sovereignty is one and indivisible, inalienable and imprescriptible. It belongs to the nation."

We should be clear about the responsibilities that this power invests us with. In front of us lie decisions of the highest national importance which we shall be called upon to take. Upon the correctness of our decisions depends not only the happiness of our land and people now, but the fate as well of generations to come.

What then are the main functions that this Assembly will be called upon to perform? One great task before this Assembly will be to devise a Constitution for the future governance of the country. Constitution-making is a difficult and detailed matter. I shall only refer to some of the broad aspects of the Constitution, which should be the product of the labours of this Assembly.

Another issue of vital import to the nation involves the future of the Royal Dynasty. Our decision will have to be taken both with urgency and wisdom, for on that decision rests the future form and character of the State.

The third major issue awaiting your deliberations arises out of the Land Reforms which the Government carried out with vigour and determination. Our "Land to the tiller" policy brought light into the dark homes of the peasantry; but, side by side, it has given rise to the problem of the landowners' demand for compensation. The nation being the ultimate custodian of all wealth and resources, the representatives of the nation are truly the best jury for giving a just and final verdict on such claims. So, in your hands lies the power of this decision.

Finally, this Assembly will, after full consideration of the three alternatives that I shall state later, declare its reasoned conclusion regarding accession. This will help us to canalise our energies resolutely and with greater zeal in directions in which we have already started moving for the social and economic advancement of our country.

To take our first task, that of Constitution-making, we shall naturally be guided by the highest principles of the democratic constitutions of the world. We shall base our work on the principles of equality, liberty and social justice which are an integral feature of all progressive constitutions. The rule of law as understood in the democratic countries of the world should be the cornerstone of our political structure.

Equality before the law and the independence of the judiciary from the influence of the Executive are vital to us. The freedom of the individual in the matter of speech, movement and association should be guaranteed: freedom of the press and of opinion should also be features of our Constitution. I need not refer in great detail to all those rights and obligations, already embodied in New Kashmir, which are integral parts of democracy which has been defined as 'an apparatus of social organisation wherein people govern through their chosen representatives and are themselves guaranteed political and civil liberties".

You are, no doubt, aware of the scope of our present constitutional ties with India. We are proud to have our bonds with India, the goodwill of those people and government is available to us in unstinted and abundant measure. The Constitution of India has provided for a federal union and in the distribution of sovereign powers has treated us differently from other constituent units. With the exception of the items grouped under Defense Foreign Affairs and Communications in the Instrument of Accession, we have complete freedom to frame our Constitution in the manner we like. In order to live and prosper as good partners in a common endeavour for the advancement of our peoples, I would advise that, while safeguarding our autonomy to the fullest extent so as to enable us to have the liberty to build our country according to the best traditions and genius of our people, we may also, by suitable constitutional arrangements with the Union, establish our right to seek and compel federal cooperation and assistance in this great task, as well as offer our fullest cooperation and assistance to the Union.

Whereas it would be easy for you to devise a document calculated to create a framework of law and order, as also a survey of the duties and rights of citizens. It will need more arduous labour to take concrete decisions with regard to the manner in which we propose to bring about the rapid economic development of the State and more equitable distribution of our national income among the people to which we are pledged. Our National Conference avows its faith in the principle that there is one thing common to men of Kashmir of all castes and creeds, and that is their humanity. That being so, the one ailment which is ruthlessly sapping the vitality of human beings in Jammu & Kashmir is their appalling poverty, and if we merely safeguard their political freedom in solemn terms, it will not affect their lives materially unless it guarantees them economic and social justice. New Kashmir contains a statement of the objectives of our social policy. It gives broadly a picture of the kind of life that we hope to make possible for the people of Jammu & Kashmir and the manner in which the economic organisation of the country will be geared to that purpose. These ideals you will have to integrate with the political structure which you will devise.

The future political set-up, which you decide upon for Jammu & Kashmir, must also take into consideration the existence of various sub-national groups in our State. Although culturally diverse history has forged an uncommon unity between them they all are pulsating with the same hopes and aspirations, sharing in each other's joys and sorrows. While guaranteeing this basic unity of the State, our constitution must not permit the concentration of power and privilege in the hands of any particular group or territorial region. It must afford the fullest possibilities to each of these groups to grow and flourish in conformity with their cultural characteristics without detriment to the integral unity of the State or the requirements of our social and economic policies.

Now let us take up an issue of basic importance which involves the fundamental character of the State itself. As an instrument of the will of a self-determining people who now become sovereign in their own right, the Constituent Assembly will now re-examine and decide upon the future of the present ruling dynasty, in respect of its authority.

It is clear that this dynasty can no longer exercise authority on the basis of an old discredited treaty.

During my trial for sedition in the "Quit Kashmir" movement, I had clarified the attitude of my party when I said:

"The future constitutional set-up in the State of Jammu & Kashmir cannot derive authority from the old source of relationship which was expiring and was bound to end soon. The set-up could only rest on the active will of the people of the State, conferring on the head of the State the title and authority drawn from the true and abiding source of sovereignty, that is the people."

On this occasion, in 1946, I had also indicated the basis on which an individual could be entrusted by the people with the symbolic authority of a Constitutional Head:

"The State and its Head represent the constitutional circumference and the centre of this sovereignty respectively, the Head of the State being the symbol of the authority with which the people may invest him for the realisation of their aspirations and the maintenance of their rights."

In consonance with these principles, and in supreme fulfilment of the people's aspirations, it follows that a Constitutional Head of the State will have to be chosen to exercise the function which this Assembly may choose to entrust to him.

So far as my Party is concerned, we are convinced that the institution of monarchy is incompatible with the spirit and needs of modern times which demand an egalitarian relationship between one citizen and another. The supreme test of a democracy is the measure of equality of opportunity that it affords to its citizens to rise to the highest point of authority and position. In consequence, monarchies are fast disappearing from the world picture, as something in the nature of feudal anachronisms. In India, too, where before the partition, six hundred and odd Princes exercised rights and privileges of rulership, the process of democratisation has been taken up and at present hardly ten of them exercise the limited authority of constitutional heads of States.

After the attainment of complete power by the people, it would have been an appropriate gesture of goodwill to recognise Maharaja Hari Singh as the first constitutional Head of the State. But I must say with regret that he has completely forfeited the confidence of every section of the people. His incapacity to adjust himself to changed conditions and his antiquated views on vital problems constitute positive disqualifications for him to hold the high office of a democratic Head of the State. Moreover, his past actions as a ruler have proved that he is not capable of conducting himself with dignity, responsibility and impartiality. The people still remember with pain and regret his failure to stand by them in times of crisis, and his incapacity to afford protection to a section of his people in Jammu.

Finally, we come to the issue which has made Kashmir an object of world interest, and has brought her before the forum of the United Nations. This simple issue has become so involved that people have begun to ask themselves after three-and-a-half years of tense expectancy. "Is there any solution?" Our answer is in the affirmative. Everything hinges round the genuineness of the will to find a solution. If we face the issue straight, the solution is simple.

The problem may be posed in this way. Firstly, was Pakistan's action in invading Kashmir in 1947 morally and legally correct, or judged by any norm of international behaviour? Sir Owen Dixon's verdict on this issue is perfectly plain. In unambiguous terms, he declared Pakistan an aggressor. Secondly, was the Maharajah's accession to India legally valid or not? The legality of the accession has not been seriously questioned by any responsible or independent person or authority.

These two answers are obviously correct. Then where is the justification of treating India and Pakistan at par in matters pertaining to Kashmir? In fact, the force of logic dictates the conclusion that the aggressor should withdraw his armed forces, and the United Nations should see that Pakistan gets out of the State.

In that event, India herself, anxious to give the people of the State a chance to express their will freely, would willingly cooperate with any sound plan of demilitarisation. They would withdraw their forces, only garrisoning enough posts to ensure against any repetition of that earlier treacherous attack from Pakistan.

These two steps would have gone a long way to bring about a new atmosphere in the State. The rehabilitation of displaced people, and the restoration of stable civic conditions would have allowed people to express their will and take the ultimate decision.

We as a Government are keen to let our people decide the future of our land in accordance with their own wishes. If these three preliminary processes were accomplished, we should be happy to have the assistance of international observes to ensure fair play and the requisite conditions for a free choice by the people.

Instead, invader and defender have been put on the same plane. Under various garbs, attempts have been made to sidetrack the main issue. Sometimes against all our ideals of life and way of living attempts divide our territories have been made in the form of separation of our state religionwise, with ultimate plans of further disrupting territorial integrity. Once an offer was made to police our country with Commonwealth forces, which threatens to bring in Imperial control by the back door. Besides the repugnance which our people have however, to the idea of bringing foreign troops on their soil, the very presence of Commonwealth troops could have created suspicions among our neighbours that we were allowing ourselves to be used as a base of possible future aggression against them. This could easily have made us into a second Korea.

The Cabinet Mission Plan has provided for three courses which may be followed by the Indian States when determining future affiliations. A State can either accede to India or accede to Pakistan, but failing to do either, it still can claim the right to remain independent. These three alternatives are naturally open to our State. While the intention of the British Government was to secure the privileges of the Princes, the representatives of the people must have the primary consideration of promoting the greatest good of the common people. Whatever steps they take must contribute to the growth of a democratic social order wherein all invidious distinctions between groups and creeds are absent. Judged by this supreme considerations, what are the advantages and disadvantages of our State's accession to either India or Pakistan or of having an independent status.

As a realist, I am conscious that nothing is all black or all white, and there are many facts to each of the propositions before us. I shall first speak on the merits and demerits of the State's accession to India. In the final analysis, as I understand it, it is the kinship of ideals which determines the strength of ties between two States. The Indian National Congress has consistently supported the cause of the State's peoples' freedom. The autocratic rule of the Princes has been done away with and representative government have been entrusted with the administration. Steps towards democratisation have been taken and these have raised the people's standard of living, brought about much-needed social reconstruction, and above all built up their very independence of spirit. Naturally, if we accede to India, there is no danger of a revival of feudalism and autocracy. Moreover, during the last four years, the Government of India has never tried to interfere in our internal autonomy. This experience has strengthened our confidence in them as a democratic State.

The real character of a State is revealed in its Constitution. The Indian Constitution has set before the country the goal of secular democracy based upon justice, freedom and equality for all without distinction.. This is the bedrock of modern democracy. This should meet the argument that the Muslims of Kashmir cannot have security in India, where the large majority of the population are Hindus. Any unnatural cleavage between religious groups is the legacy of Imperialism, and no modern State can afford to encourage artificial division if it is to achieve progress and prosperity. The Indian Constitution has amply and finally repudiated the concept of a religious State, which is a throwback to medievalism, by guaranteeing the equality of rights of all citizens irrespective of their religion, colour, caste and class.

The national movement in our State naturally gravitates towards these principles of secular democracy.

The people here will never accept a principle which seeks to favour the interests of one religion or social group against another. This affinity in political principles, as well as in past association, and our common path of suffering in the cause of freedom, must be weighed properly while deciding the future of the State.

We are also intimately concerned with the economic well-being of the people of this State. As I said before while referring to constitution-building, political ideals are often meaningless unless linked with economic plans. As a State, we are concerned mainly with agriculture and trade. As you know, and I have detailed before, we have been able to put through our "land to the tiller" legislation and make of it a practical success. Land and all it means is an inestimable blessing to our peasants who have dragged along in servitude to the landlord and his allies for centuries without number. We have been able under present conditions to carry these reforms through, are we sure that in alliance with landlord-ridden Pakistan, with so many feudal privileges intact, that the economic reforms of ours will be tolerated. We have already heard that news of our Land Reforms has travelled to the peasants of the enemy-occupied area of our State, who vainly desire like status, and like benefits. In the second place, our economic welfare is bound up with our arts and crafts. The traditional markets for these precious goods, for which we are justly known all over the world, have been centred in India. The volume of our trade, in spite of the dislocation of the last few years, shows this. Industry is also highly important to us. Potentially we are rich in minerals, and in the raw materials of industry; we need help to develop our resources. India, being more highly industrialised than Pakistan, can give us equipment, technical services and materials. She can help us too in marketing. Many goods also, which it would not be practical for us to produce here, for instance, sugar, cotton, cloth and other essential commodities, can be got by us in large quantities from India. It is around the efficient supply of such basic necessities that the standard of the man in the street depends.

I shall refer now to the alleged disadvantages of accession to India.

To begin with, although the land frontiers of India and Kashmir are contiguous, an all-weather road-link, as dependable as the one we have with Pakistan, does not exist. This must necessarily hamper trade and commerce to some extent, particularly during the snowy winter months. But we have studied this question, and, with improvements in modern engineering, if the State wishes to remain with India, the establishment of an all-weather stable system of communication is both feasible and easy. Similarly, the use of the State rivers as a means of timber transport is impossible if we turn to India, except in Jammu, where the river Chenab still carries logs to the plains. In reply to this argument, it may be pointed out that accession to India will open up possibilities of utilising our forest wealth for industrial purposes and that, instead of lumber, finished goods, which will provide work for our carpenters and labourers, can be exported to India where there is a ready market for them. Indeed, in the presence of our fleets of timber-carrying trucks, river-transport is a crude system, which inflicts a loss of some 20% to 35% in transit. Still another factor has to be taken into consideration. Certain tendencies have been asserting themselves in India, which may, in the future, convert it into a religious State, wherein the interests of Muslims will be jeopardised. This would happen if a communal organisation had a dominant hand in the Government, and Congress ideals of the equality of all communities were made to give way to religious intolerance. The continued accession of Kashmir to India should, however, help in defeating this tendency. From my experience of the last four years, it is my considered judgement that the presence of Kashmir in the Union of India has been the major factor in establishing relations between the Hindus and Muslims of India.

Gandhiji was not wrong when he uttered words before his death which paraphrase, "I lift up mine eyes into the hills, from whence cometh my help."

As I have said before, we must consider the question of accession with all open mind, and not let our personal prejudices stand in the way of a balanced judgement. I will now invite you to evaluate the alternative of accession to Pakistan.

The most powerful argument which can be advanced in her favour is that Pakistan is a Muslim State, and, big majority of our people being Muslims, the State must accede to Pakistan. This claim of being a Muslim State is, of course, only a camouflage. It is a screen to dupe the common man, so that he may not see clearly that Pakistan is a feudal State in which a clique is trying by these methods to maintain itself in power. In addition to this, the appeal to religion constitutes a sentimental and a wrong approach to the question. Sentiment has its own place in life but often it leads to irrational action. Some argue, as supposedly natural corollary to this, that on our acceding to Pakistan, our annihilation or survival depends.

Facts have disproved this, right-thinking men would point out that Pakistan is not an organic unity of all the Muslims in this sub-continent. It has on the contrary, caused the dispersion of the Indian Muslims for whose benefit it was claimed to have been created. There are two Pakistans, at least a thousand miles apart from each other. The total population of Western Pakistan, which is contiguous to our State, is hardly 15 million. While the total number of Muslims, resident in India, is as many as 40 million. As one Muslim is as good as another, the Kashmiri Muslims, if they are worried by such considerations, should choose the forty million living in India.

Looking at the matter too from a more modern political angle, religious affinities alone do not and should not normally determine the political alliance of States. We do not find a Christian bloc, a Buddhist bloc, or even a Muslim bloc, about which there is so much talk nowadays in Pakistan. These days economic interests and a community of political ideals more appropriately influence the policies of States.

We have another important factor to consider, if the State decides to make this the predominant consideration. What will be the fate of the one million non-Muslims now in our State? As things stand at present, there is no place for them in Pakistan. Any solution which will result in the displacement or the total subjugation of such a large number of people will not be just or fair, and it is the responsibility of this House to ensure that the decision that it takes on accession does not militate against the interests of any religious group.

As regards the economic advantages, I have mentioned before the road and river links with Pakistan. In the last analysis, we must, however, remember that we are not concerned only with the movement of people but also with the movement of goods and the linking up of markets. In Pakistan, there is a chronic dearth of markets for our products. Neither, for that matter, can she help us with our industrialisation, being herself industrially backward.

On the debit side, we have to take into account the reactionary character of her politics and State policies.

In Pakistan, we should remember that the lot of the States' subjects has not changed and they are still helpless and under the heel of their Rulers, who wield the same unbridled power under which we used to suffer here. This clearly runs counter to our own aspirations for freedom.

Another big obstacle to a dispassionate evaluation of her policies is the lack of a constitution in Pakistan.

As it stands at present, this State enjoys the unique position of being governed by a Constitution enacted by an outside Parliament, which gives no idea whatsoever of the future shape of civic and social relations.

It is reasonable to argue that Pakistan cannot have the confidence of a freedom-loving and democratic people when it has failed to guarantee even fundamental rights to its citizens. The right of self-determination for nationalities is being consistently denied and those who fought against Imperialism for this just right are being suppressed with force. We should remember Badshah Khan and his comrades, who laid down their all for freedom, also Khan Abdus Samad Khan and other fighters, in Baluchistan.

Our national movement in the State considers this right of self-determination inalienable, and no advantage, however great, will persuade our people to forego it.

The third course open to us has still to be discussed. We have to consider the alternative of making ourselves an Eastern Switzerland, of keeping aloof from both States but having friendly relations with them. This might seem attractive in that it would appear to pave the way out of the present deadlock. To us as a tourist country, it could also have certain obvious advantages, but in considering independence, we must not ignore practical considerations. Firstly, it is not easy to protect sovereignty and independence in a small country, which has not sufficient strength to defend itself on our long and difficult frontiers bordering so many countries. Secondly, we must have the goodwill of all our neighbours. Can we find powerful guarantors among them to pull together always in assuring us freedom from aggression? I would like to remind you that from August 15th to 22th October, 1947, our State was independent and the result was that our weakness was exploited by the neighbour with invasion. What is the guarantee that, in future too, we may not be victims of a singular aggression.

I have now put the pros and cons of the three alternatives before you. It should not be difficult for men of discrimination and patriotism gathered in this Assembly to weigh all these in the scales of our national good and pronounce the well-being of the country lies in the future.

ANNEXURE-B9

Text of the Delhi Agreement, 1952

The representatives of the Kashmir Government conferred with the representatives of the Indian Government and arrived at an agreement in order to endorse the main decisions of the Constituent Assembly of the State of J&K. This arrangement was later on known as the "Delhi Agreement, 1952". The main features of this agreement were:

(i) In view of the uniform and consistent stand taken up by the Jammu and Kashmir Constituent Assembly that sovereignty in all matters other than those specified in the Instrument of Accession continues to reside in the State, the Government of India agreed that, while the residuary powers of legislature vested in the Centre in respect of all states other than Jammu and Kashmir, in the case of the latter, they vested in the State itself;

(ii) It was agreed between the two Governments that in accordance with Article 5 of the Indian Constitution, persons who have their domicile in Jammu and Kashmir shall be regarded as citizens of India, but the State legislature was given power to make laws for conferring special rights and privileges on the 'State Subjects' in view of the 'State Subject Notifications' of 1927 and 1932: the State legislature was also empowered to make laws for the 'State Subjects' who had gone to Pakistan on account of the communal disturbances of 1947, in the event of their return to Kashmir;

(iii) As the President of India commands the same respect in the State as he does in other Units of India, Articles 52 to 62 of the Constitution relating to him should be applicable to the State. It was further agreed that the power to grant reprieves, pardons and remission of sentences, etc. would also vest in the President of India;

(iv) The Union Government agreed that the State should have its own flag in addition to the Union flag, but it was agreed by the State Government that the State flag would not be a rival of the Union flag; it was also recognised that the Union flag should have the same status and position in Jammu and Kashmir as in the rest of India, but for historical reasons connected with the freedom struggle in the State, the need for continuance of the State flag was recognised;

(v) There was complete agreement with regard to the position of the Sadar-e-Riyasat; though the Sadar-e-Riyasat was to be elected by the State Legislature, he had to be recognised by the President of India before his installation as such; in other Indian States, the Head of the State was appointed by the President and was as such his nominee but the person to be appointed as the Head, had to be a person acceptable to the Government of that State; no person who is not acceptable to the State Government can be thrust on the State as the Head. The difference in the case of Kashmir lies only in the fact that Sadar-e-Riyasat will in the first place be elected by the State legislature itself instead of being a nominee of the Government and the President of India. With regard to the powers and functions of the Sadar-e-Riyasat, the following argument was mutually agreed upon:

(a) the Head of the State shall be a person recognised by the President of the Union on the recommendations of the Legislature of the State;

(b) he shall hold office during the pleasure of the President;

(c) he may, by writing under his hand addressed to the President, resign his office;

(d) subject to the foregoing provisions, the Head of the State shall hold office for a term of five years from the date he enters upon his office;

(e) provided that he shall, notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office."

(vi) With regard to the fundamental rights, some basic principles agreed between the parties were enunciated; it was accepted that the people of the State were to have fundamental rights. But in the view of the peculiar position in which the State was placed, the whole chapter relating to 'Fundamental Rights' of the Indian Constitution could not be made applicable to the State, the question which remained to be determined was whether the chapter on fundamental rights should form a part of the State Constitution of the Constitution of India as applicable to the State;

(vii) With regard to the jurisdiction of the Supreme Court of India, it was accepted that for the time being, owing to the existence of the Board of Judicial Advisers in the State, which was the highest judicial authority in the State, the Supreme Court should have only appellate jurisdiction;

(viii) There was a great deal of discussion with regard to the "Emergency Powers"; the Government of India insisted on the application of Article 352, empowering the President to proclaim a general emergency in the State; the State Government argued that in the exercise of its powers over defence (Item 1 on the Union List), in the event of war or external aggression, the Government of India would have full authority to take steps and proclaim emergency but the State delegation was, however, averse to the President exercising the power to proclaim a general emergency on account of internal disturbance.

In order to meet the viewpoint of the State's delegation, the Government of India agreed to the modification of Article 352 in its application to Kashmir by the addition of the following words:

"But in regard to internal disturbance at the request or with the concurrence of the Government of the State." At the end of clause (1) Both the parties agreed that the application of Article 356, dealing with suspension of the State Constitution and 360, dealing with financial emergency, was not necessary.

ANNEXURE-C1

Text of Joint Memorandum 08-08-1953 submitted by Cabinet Members of the Sheikh Abdullah Ministry to Sheikh Abdullah and Yuvraj Karan Singh

Joint Memorandum submitted by Cabinet Members of the Sheikh Abdullah Ministry to Sheikh Abdullah, copy to the Sadar-e-Riyasat on 8th August, 1953.

You will kindly recall that in the course of the meeting of the Cabinet, held on 7th August, 1953, and on many other occasions previously, we brought to your notice that certain pronounced tendencies indicating a very sharp divergence of opinion had become manifest in our approach to the broad policies which form the basis of the Government and the administration. Contrary to the normal practice of a uniform policy in the conduct of the administration, it has become increasingly clear that Mr. Beg and you, in utter disregard of the opinion of your colleagues and without their consultation, make public pronouncements which flout to principle of joint responsibility. Since the formation of the present Government, in spite of the constant endeavour of your colleagues to secure maximum agreement and unity in the formation and execution of essential policies in accordance with the mandate given by the people, you have frequently adopted certain arbitrary measures for complete denial of the right of expression of opinion of even your own colleagues in the handling both of external and internal affairs of the State.

Most of these measures and policies have been self-contradictory and inconsistent, leading to serious complications. After the establishment of the Legislative Assembly, we have expected that our joint responsibility and collective functioning as a Cabinet would be governed by well-established parliamentary practices. But we regret to observe that you have not only disregarded the wishes of your colleagues in the Cabinet but have acted in the Legislative Assembly also in a manner which denied the right of freely expressing their opinions to the representatives of the people in regard to the basic policies pursued by the Government. In the past, even though occasions have arisen when we seriously opposed certain measures which affected the efficient and smooth functioning of the administration we refrained from bringing matter to a head by making concession to your views in the interests of securing harmony and concord in the working of the Government. Unfortunately, however, this spirit of accommodation has been misconstrued by you and you have consequently adopted an attitude which is far from democratic and indicates a tendency towards making arbitrary use of power and position. Your attitude with regard to the political and economic policies of the Government has given rise to a great deal of confusion in the public mind and serious dislocation in economic life of large sections of the people. For quite some time now, a factional tendency has been evident in the Cabinet, which has been responsible for a progressive deterioration in the administration. Consequently, various ameliorative measures proposed by the members of the Cabinet in good faith have not been implemented honestly. Above all, there has been a singular failure to exercise vigilance and proper supervision in the day-to-day functioning of the administration, which has produced corruption, nepotism, inefficiency and wanton wastage of public resources in most sphere of Government activity. All these facts of omission and commission have inevitably created large-scale discontent in various parts of the State.

All along the Government has lacked a sense of uniformity and direction in its plans and programme. Time and again, we have brought to your notice the imperative need of arresting this process of deterioration in the administration. We attempted to represent the feelings of various sections of the people and urgent necessity of undertaking immediate measures for the amelioration of these conditions. But we regret to say that you not only disregarded all our opinions in this respect, but have been ignored the recommendations of the Wazir Committee, which had been set up by the Government to inquire into a number of grievances of the people.

Consequently, the political uncertainty has been accentuated with the result that our economy has been thrown into stagnation, which has impoverished large masses of people, when the tourist traffic showed healthy improvement last year, and this year, you destroyed public confidence through your irresponsible utterances.

The events of the last few months have, in particular, thrown the state in the midst of a severe crisis. The repercussions of this crisis are bound to be serious and far-reaching. We regret to state that you, as the head of the Government, have not only failed to take note of the situation but have, by your words and deeds, accentuated the tension, you have consistently refused to acknowledge responsibilities that devolve on you as the Prime Minister of the State by not following the declared policies that form the basis of the Government. You have tended to act in a manner that has generated uncertainty, suspense and doubt in the minds of the people of the State in general and of those in Jammu and Ladakh in particular. All these factors have combined to strengthen the disruptionist forces seeking the disintegration of the State.

As is well known, the unprovoked aggression from Pakistan had put our very national existence at stake. In that critical hour of crisis, all of us jointly approached India for help and requested her to accept the accession of the State and assist us in repelling the aggression and restoring peaceful conditions in the State. The united will of the people stood solidly behind this act of Kashmir's accession to India. While accepting our request, the Government of India assured us of the right of self-determination for our people. **After the convening of the Constituent Assembly, certain inescapable elaborations of the State's relationship with India were defined in the Delhi Agreement, of which you were the Chief Architect on our behalf. Your stand was unanimously endorsed by the Government, the National Conference, the Indian Parliament and the Constituent Assembly of the State. But you have not only deliberately delayed implementation of the agreements on these matters which form the sheet-anchor of our policy, but have purposefully and openly denounced these in public. You have thus arbitrarily sought to precipitate a rupture in the relationship of the State with India**. *Though it is true that the people of the State have the ultimate right to decide their future, the conditions of chaos and confusion which are being engineered today by you are bound to be fatal for the exercise of the right of self-determination by our people. Under these circumstances, what seems inevitable is that interested foreign powers may well take advantage of and exploit the situation for their own selfish purpose.* Mr. M.A. Beg *has persistently been following policies of narrow sectarianism, and communalism, which have seriously undermined the oneness of the*

State. Unfortunately, you have been lending your support to his policies in the Cabinet and his activities in public. This has generated bitter feelings of suspicion and doubt in the minds of the people of various constituent units of the State. You have connived at all these unfortunate happenings and, thus, strengthened and encouraged the forces of disruption. The result is that unity and the secular character, the two fundamental aspects of our State, stand threatened today.

We have been constantly urging upon you to put an end to these unhealthy tendencies and to under take unitedly measures for restoring the moral of the people. In spite of our best intentions, we have failed in our efforts.

It is, therefore, with great pain that we have to inform you of our conclusion that the Cabinet, constituted as it is at present and lacking as it does the unity of purpose and action, has lost the confidence of the people in its ability to give them a clean, efficient and healthy administration.

ANNEXURE-C2

Text of Letter dated 8th August, 1953 of Karan Singh to Sheikh Abdullah informing dismissal of Cabinet of Sheikh Abdullah

Sadar-e-Riyasat's letter to Sheikh Abdullah
Karan Mahal,
Srinagar,
8th August, 1953

My dear Sheikh Abdullah,

You will recall that, in the course of our meeting today, I conveyed to you my deep concern at the serious differences which exist in your Cabinet. I impressed upon you the immediate necessity for restoring harmony and unity or purpose among the members of the Cabinet in the execution of its policies. You were, however, unable to assure me that these acute differences could be remedied.

This conflict within the Cabinet has for a considerable time been causing great confusion and apprehension in the minds of the people of the State. The situation has reached an unprecedented crisis with the effect that three or your four Cabinet colleagues have, in a memorandum to you, a copy of which they have sent to me, expressed their complete dissatisfaction with your action and policies, which have lost the present Cabinet and confidence of the people. This document clearly indicates that the divergence within your Cabinet has reached proportions in which the unity, prosperity and stability of the State are gravely jeopardised.

When we met today, I further suggested to you that an emergency meeting of the cabinet should be held at my residence this evening so that we could jointly explore the possibilities of securing a stable, unified and efficient Government for the country. **But to my regret, you evaded the issue.**

Under these conditions, I, as Head of the State, have been forced to the conclusion that the present Cabinet cannot continue in Office any longer and, hence, I regret to inform you that I have dissolved the Council of Ministers headed by you. A copy of my order in this connection is attached herewith.

I need hardly add how deeply distressed I was at having to take this action, but the vital interests of the people of the State, which it is my duty to safeguard, leave me no alternative. **I trust that this will in no way affect the mutual regard and cordial feelings we have for each other.**

Yours sincerely,
(Sd/-) Karan Singh
Sadar-e-Riyasat

ANNEXURE-C3

Text of Order dated 8th August, 1953 of Sadar-e-Riyasat dismissing Sheikh Cabinet on 8th August, 1953

Whereas for some months, I have been noticing with growing concern that there have existed acute differences of opinion between members of the Government on basic issues—political, economic and administrative—affecting the vital interests of the State;

And whereas members of the Government have been publicly expressing sharply conflicting points of view regarding these matters;

And whereas on these fundamental issues, the view of a majority of the members the Cabinet are sharply opposed to the view held by the Prime Minister and one of his colleagues;

And whereas efforts to work in harmony and pull together as a team having failed, and the majority in the Cabinet has expressed that, lacking as it does in unity of purpose and Action, the present Cabinet has lost the confidence of the people;

And whereas the economic distress of the people has considerably increased which needs prompt and serious attention;

And whereas, a state has reached in which the very process of honest and efficient administration has become impracticable;

And whereas finally, the functioning of the present Cabinet on the basis of joint responsibility has become impossible and the resultant conflicts have gravely jeopardised the unity, prosperity and stability of the State;

I, Karan Singh, Sadar-e-Riyasat, functioning in the interests of the people of the State, who have reposed the responsibility and authority of the Headship of the State in me, do hereby dismiss Sheikh Mohammed Abdullah from the Prime Ministership of the State of Jammu and Kashmir, and consequently the Council of Ministers headed by him is dissolved forthwith.

ANNEXURE-C4

Text of Sadar-e-Riyasat's letter to Bakshi Ghulam Mohammad Dated 9th August, 1951

Karan Mahal
Srinagar,

9th August, 1951

My Dear Bakshi Sahib,

I have just dissolved the cabinet which functioned till today and have relieved it of the powers and functions of civil administration of the State. I, however, feel that a new Cabinet should be constituted immediately so as to avoid a political and administrative vacuum. In the task of forming a new Ministry, I have decided to seek your aid and advice. **Will you, therefore, make it convenient to meet me immediately so that we might discuss the formation and composition of the new Cabinet?**

I need hardly impress the continuance in office of the new Cabinet will depend upon its securing a vote of confidence from the Legislative Assembly during its coming session.

Yours sincerely,
(Sd/-) Karan Singh

ANNEXURE-C5

Text of Bakshi Ghulam Mohammad's reply to Sadar-I-Riyasat's letter dated 9th August, 1953

Srinagar 9th August, 1953

My dear Sadar-e-Riyasat,

I am highly grateful to you for the trust you have reposed in me by calling me to offer you my aid and advice in the task of constituting a new Cabinet.

In accepting your kind invitation, I am solely guided by a sense of duty to my country, and its people and I shall try to the best of my ability to fulfil the responsibilities which you propose to entrust to me.

I shall be available for consolation at your convenience.

Yours sincerely,
G.M. Bakshi

ANNEXURE-D1

An Act further to amend the Jammu and Kashmir Constitution Act, 1996. Act No. XVII of 2008 (Samvat)

Whereas it is expedient further to amend the Jammu and Kashmir Constitution Act, 1996, with a view to bring it in accord with the spirit of Proclamations dated 5th March, 1948, 20th

June, 1949 and 20th April, 1951 and the changes brought about in the actual governance of the State, in the manner hereinafter appearing:

Now, therefore, in exercise of the powers reserved under Section 5 of the J&K Constitution Act, 1996, read with the Proclamation issued by His Highness and published in the Extraordinary issue of the Government Gazette, dated 7th March, 2006, Yuvraj Shree Karan Singh ji Bahadur is pleased to enact as follows: Short title and Commencement .... (1) This act may be called the Jammu and Kashmir Constitution (Amendment) Act, 2008. (2) It shall come into force at once. Amendment of Section 4, Act XIV of 1996. 2: In Section 4 of the Jammu and Kashmir Constitution Act, 1996 (hereinafter referred to as the 'said Act') for the words "except insofar as may be otherwise provided by or under this Act, or as may be otherwise directed by His Highness", the words "on the advice of the Council except insofar as may be otherwise provided by or under this Act and except in regard to those matters enumerated in List I in the Seventh Schedule to the Constitution of India, with respect to which the Parliament of India has power to make law for the State" shall be substituted.

Omission of section 5, Act XIV of 1996. 3: Section 5 of the said Act shall be omitted. Amendment of Section 6, Act XIV of 1996. 4: In section 6 of the said Act for the words and figures "subject always to the provision of sections 4 and 5, subject also to such rules of business and allocation of portfolios and such other directions as to consultations with or reports to and confirmation by His Highness on special matters as His Highness may give from time to time by general or special orders in that behalf", the words "subject to the Provisions of this Act" shall be substituted. Substitution of Section 7, Act XIV of 1996. 5: For Section 7 of the said Act, the following Section shall be substituted, namely:

"Constitution of the Council-7. The Council shall consist of the Prime Minister appointed by His Highness and such other Ministers of the State as His Highness may appoint on the advice of the Prime Minister. The Prime Minister and other Ministers shall be collectively responsible to the Legislative Assembly of the State. The Prime Minister shall be the President of the Council.".

Amendment of Section 9, Act XIV of 1996. 6: In Section 9 of the said Act, for the words "The Prime Minister may with the previous sanction of His Highness", the words "The Council may" shall be substituted.

Insertion of new Sections 9-A and 9-B in Act XIV of 1996. 7: After Section 9 of the said Act, the following sections shall be inserted namely:

Appointment of Deputy Ministers - 9-A:

1. His Highness may, on the advice of the Prime Minister, appoint Deputy Ministers to work in such Ministries as the Council may consider necessary.
2. The Deputy Ministers shall be selected from amongst the members of the Legislative Assembly.
3. The Deputy Ministers, before entering on the duties of the office, shall take an oath of office before the Prime Minister in the form set out in Schedule I.

Salaries of Ministers and Deputy Ministers - 9-B: 1.

1. The salaries and allowances of Ministers shall be such as the Legislative Assembly may from time to time by Act determine and, until the Legislative Assembly so determines, Ministers shall draw such salaries and allowances as they were drawing immediately before the commencement of the Legislative Assembly.
2. The salaries and allowance of Deputy Ministers shall be such as may be determined by the Legislative Assembly from time to time and until the Legislative Assembly so determines, the salaries and allowances of Deputy Ministers shall be as set out in Schedule II.
3. Amendment of Section 10, Act XIV of 1996. 8: After Subsection (3) of Section 10 of the said Act, the following Sub-section shall be added namely:
4. The Council may make rules not inconsistent with this Act in regard to the duties of the Advocate General.

Omission of Section 12, Act XIV of 1996. 9: Section 12 of the said Act shall be omitted. Substitution of words "Legislative

Assembly" for the words "Praja Sabha" in part III, Act XIV of 1996. 10. In Part III of the said Act, for the words "Praja Sabha", wherever they occur, the words "Legislative Assembly" shall be substituted. Substitution of Section 13, Act XIV of 1996. 11: For Section 13 of the said Act, the following Section shall be substituted, namely:

"Legislature: 13

1. The Legislature of the State shall consist of His Highness and a House to be known as the Legislative Assembly.
2. Notwithstanding anything contained in this Act, the powers of the Legislative Assembly under this Act shall, until other provision is made by or in accordance with a law made by the Constituent Assembly, set up under the Proclamation dated 20th April, 1951, be exercisable by the said Constituent Assembly and references in this Act to the Legislative Assembly shall be construed accordingly.
3. The Legislative Assembly may make rules and standing orders, subject to the provisions of this Act for regulating their procedure and conduct of their business.
4. Until rules are made under Sub-section (3), the rules of Procedure and standing orders in force in relation to the Praja Sabha shall apply to the Legislative Assembly, subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly."

Omission of Section 14, Act XIV of 1996. 12: Section 14 of the said Act shall be omitted.

Substitution of Section 15, Act XIV of 1996. 13: For Section 15 of the said Act, the following Section shall be substituted, namely:

"Summoning of the Legislative Assembly: 15

1. The Legislative Assembly shall be summoned to meet at least twice in a year and more than six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.
2. Subject to the Provisions of this section, the Speaker of the Legislative Assembly may from time to time:

(a) summon the Legislative Assembly to meet at such time and place as he thinks fit; (b) prorogue the Legislative Assembly."

Amendment of Section 16, Act XIV of 1996. 14: In Section 16 of the said Act.

(i) In Clause (b) the words "or any other Minister" shall be omitted, and

(ii) In Clause (c) for the words "the President" the word, "the Speaker" shall be substituted.

Amendment of Section 17, Act XIV of 1996. 15: In Section 17 of the said Act, for the words Flue President" the words "the Speaker" shall be substituted. Substitution of Section 19, Act XIV of 1996. 16: For Section 19 of the said Act, the following Section shall be substituted, namely:

"Speaker and Deputy Speaker: 19.

(1) The Legislative Assembly may choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and so often as the office of the Speaker or Deputy Speaker becomes vacant, the Assembly may choose another member to be the Speaker or the Deputy Speaker, as the case may be.

Until the Legislative Assembly elects a Speaker and Deputy Speaker, as provided in Sub-section (1), the President of the Constituent Assembly shall act as Speaker and Deputy Speaker of the Legislative Assembly."

Amendment of Section 20, Act XIV of 1966.17: In Section 20 of the said Act:

(i) Sub-section (1) shall be omitted;

(ii) Sub-section A shall be renumbered as Sub-section (i) and in the Sub-section as so renumbered.

(a) For the words "Deputy President", the words "Deputy Speaker" and for the words "the President", wherever they occur, the words "the Speaker" shall be substituted, and

(b) The words "with the approval of the Council" shall be omitted; and

(iii) for Sub-section (3), the following Sub-section shall be substituted, namely:

"(2) During the temporary absence of else Speaker and the Deputy Speaker from a meeting of the Legislative Assembly, such person shall act a Speaker as may be determined by the Rules of Procedure of the Legislative Assembly or, if no such person is present, such other person as may be determined by the Assembly".

Amendment of Section 21, Act XIV of 1996. 19: In section 2 of the said Act, for the words "Deputy President", the words "the Speaker or the Deputy Speaker" shall be substituted.

Substitution of Section 22, Act XIV of 1996. 19: For Section 22 of the said Act, the following Section shall be substituted, namely:

"Parliamentary Secretaries-22.

(1) The Council may appoint from among the members of the Legislative Assembly as many Parliamentary Secretaries for such period and on such term and conditions as the Council may think fit.

(2) The Council may make rules not inconsistent with the provisions of this Act in regard to the duties of Parliamentary Secretaries".

Substitution of Section 23, Act, XIV of 1996. 20: For Section 23 of the said Act, the following section shall be substituted, namely:

"Legislative power of the Legislative Assembly-23, Subject to the provisions of the Act, the Legislative Assembly may make laws for the whole or any part of the State and for the State subjects, wherever they may be, except in regard to those matters enumerated in List I in the seventh Schedule to the Constitution of India with respect to which the Parliament of India has power to make laws for the State."

Omission of Section 24, Act XIV of 1996. 21: Section 24 of the said Act shall be omitted.

Amendment of Section 25, Act XIV of 1996. 22: In Section 25 of the said Act:

(i) in Sub-section (l) for the word "President", the word "Speaker" shall be substituted, and

(ii) in Sub-section (3) for the words "one-fifth", wherever they occur, the words "one-fourth" shall be substituted.

Omission of Sections 26, 27 and 28, Act XIV of 1996. 23: Sections 26, 27 and 28 of the said Act shall be omitted.

Substitution of Section 30, Act, XIV of 1996. 24: For Section 30 of the said Act, the following section shall be substituted, namely:

"Allowances and Salaries: 30. The Speaker, the Deputy Speaker and the members of the Legislative Assembly shall receive such salaries and allowances as may be determined by an Act of the Legislative Assembly and until that Act is passed, such salaries and allowances shall be as set out in Schedule III."

Amendment of Section 31, Act XIV of 1996. 25: In Sub-section (3) of Section 31 of the said Act, for the words "In English", the words "both in Urdu and English" shall be substituted.

Amendment of Section 32, Act XIV of 1966. 26: in Section 320f, the said Act, the proviso shall be omitted.

Substitution of Section 38, Act XIV of 1996.28: For Section 38 of the said Act, the following Section shall be substituted, namely:

"Expenditure charged on the revenues of the State-43

The following expenditure shall be the expenditure charged on the revenues of the State:

1. Allowances of His Highness and other expenditure relating to his office;
2. Debt charges for which the State is liable including interest, sinking fund charges and Redemption charges and other expenditure relating to the raising of loans and service redemption of debt;
3. Salaries, allowances and pensions payable to or in respect of the Judges of the High Court and the Members of His Highness Board of Judicial Advisers;
4. Expenditure relating to Constituent Assembly and its staff;
5. Any sums required to satisfy and judgement decree or award of any court or arbitral tribunal;
6. Any other expenditure declared by this Act or any Act of the Legislative Assembly to be so charged."

Amendment of section 45, Act XIV of 1996. 32: In Section 45 of the said Act:

(i) at the end of sub-section (1), fullstop shall be deleted, and the following words shall be added, namely: "but nothing in this sub-section shall be construed as preventing the discussion in the Legislative Assembly of any of these estimates."

(ii) Provisions to sub-section (2) shall be omitted.

Substitution of Section 46, Act XIV of 1996. 33: For Section 46 of the said Act, the following Section shall be substituted, namely:

"Supplementary Expenditure. – 46: If in respect of any financial year a further expenditure from the revenues of the State becomes necessary over and above the expenditure authorised for that year, the Council shall have the power to authorise that expenditure. A statement of the Legislative Assembly along with the financial statement for the following year and the provisions of the preceding Sections shall have effect in relation to that statement of the expenditure as they have in relation to the annual financial statement."

Amendment of Section 48, Act XIV of 1966. 34: In Sub-section (b) of Section 48 of the said Act for the words "one or more Judges" the words "two or more other Judges" shall be substituted.

Amendment of Section 49, Act XIV of 1996. 35: In Section 49 of the said Act, for the figures "553" the word "Sixty" shall be substituted and the first proviso shall be omitted.

Amendment of Section 51, Act XIV of 1996. 36: In Section 51 of the said Act, for the words "British India", wherever they occur, the word "India" shall be substituted.

Substitution of Section 72. Act XIV of 1996. 37: For Section 72 of the said Act, the following Section shall be substituted, namely:

Prerogative – 72. Nothing in this Act shall derogate from the prerogative of His Highness to grant pardons reprieves, respites of remissions of punishment."

Amendment of Section 75, Act XIV of 1996. 38: In Section 75 of the said Act, the words "Subject to the provisions of Section 53" shall be omitted.

Omission of Sections 77 and 78, Act XIV of 1996. 39: Sections 77 and 78 of the said Act shall be omitted.

ANNEXURE-D2

Bill to amend the Constitution Act, 1996: 17 November, 1952

Bill to amend the Jammu and Kashmir Constitution Act, 1996 Samvat

Be it enacted by the Constituent Assembly as follows:

1. Short title.... (l) This Act may be called the Jammu and Kashmir Constitution (Amendment) Act, 2009.
2. It shall come into force on the 17th of November, 1952.
3. Amendment of Section 3, Act XIV of 1996 Clause (c) of Section 3 of the Jammu and Kashmir Constitution Act, 1996 (hereinafter referred to as "the said Act") shall be omitted.
4. Substitution of Section 4, Act XIV of 1996....For Section 4 of the said Act, the following Section shall be substituted, namely:
5. "Sadar-e-Riyasat....
    1. The Head of the State shall be designated as "Sadar-e-Riyasat".
    2. All rights, authority and Jurisdiction which appertain or are incidental to the Government of the territories of the State of Jammu and Kashmir shall be exercisable by the Sadar-e-Riyasat on the advice of the Council except insofar as may be otherwise provided by or under this Act, and except in regard to those matters enumerated in List I in the Seventh Schedule to the Constitution of India with respect to which the Parliament of India has power to make laws for the State.

3. Election and term of office of the Sadar-e-Riyasat and all other matters pertaining to the office of the Sadar-e-Riyasat shall be regulated in accordance with the Resolution of the Constituent Assembly dated the 21st of August, 1952, which Resolution is set out in Schedule I.
4. Amendment of a number of sections by substitution of "Sadar-e-Riyasat" for "His Highness" in Act XIV of 1996...In Sections 7, 8, 9....A Sub-section (1), no Sub-sections (1) and (3), 11, 13 Sub-section (1), 16, 17, 31 Sub-sections (1) and (2) 38. 43 Clause (a), 48 Sub-section (b), 49, 52, 53, 57, 58, 64 Sub-section (1), 67 Sub-section (2) and 71 of the said Act, for the words "His Highness" wherever occurring, the words "the Sadar-e-Riyasat" shall be substituted.
5. Amendment of Sections 8, 9-A, 53 and 71, Act XIV of 1996....In Sections 8, 9-A, 53 and 71, for the word and figure 'Schedule 1" wherever occurring, the word, figure and letter "Schedule I-A" shall be substituted.
6. Amendment of Sections 37 and 43 (c) heading of Section 71 and schedule I, Act XIV of 1996....In Sections 37 and 43 Clause (c), the heading to Section 71 and form C of Schedule I (now to be renumbered as I-A) of the said act for the words "His Highness" "Board of Judicial Advisers" the words "Board of Judicial Advisers" shall be substituted.
7. Addition of new Section 46-A, Act XIV of 1996.... After Section 46 of the said Act, the following Section shall be added, namely: "46-A votes on account, votes of credit of and exceptional grants.
   (1) Notwithstanding anything in the foregoing provisions of this Act, the Legislative Assembly shall have power:
      (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the

procedure prescribed in Section 45 for the voting of such grant;

(b) to make a grant for meeting on unexpected demand upon the revenues of the State when, on account of magnitude or the indefinite character of the service, the demand cannot be stated with details ordinarily given in an Annual Financial Statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year.

(2) The provisions of Section 45 shall have effect in relation to the making of any grant under Sub-section (1) as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the Annual Financial Statement.

8. Amendment of Section 55, Act, XIV of 1996.... In Section 55 of the said Act, the words "shall run and be in the name and style of His Highness and" shall be omitted.

9. Amendment of Section 66, Act XIV of 1996....In Section 66 of the said Act, for the words "the commands of His Highness", the words "orders of the Sadar-e-Riyasat" shall be substituted and for the words "His Highness", where they occur for the second time the words "the Sadar-e-Riyasat" shall be substituted.

10. Amendment of Section 72. Act XIV of 1996.... In Section 72 of the said Act:

(i) the heading "Prerogative" to the Section shall be omitted; and

(ii) for the words "Prerogative of His Highness", the words "Powers of the Sadar-e-Riyasat" shall be substituted.

11. Substitution of new Section for Section 73, Act XIV of 1996....for Section 73 of the said Act, the following Section shall be substituted namely:...
 "Revenues of the Jammu and Kashmir State-73... All revenues and public monies raised or received by or on behalf of the Jammu and Kashmir Government shall be received for and credited to the account of the Jammu and Kashmir State.
 Explanation: The expression "revenues" includes:
 (a) all fines and penalties incurred by the sentence or order of any court of justice in the State, and all forfeitures, for crimes, of any movable or immovable property in the State; and
 (b) all movable and immovable property in the State escheating or lapsing for want of a heir or successor and all property in the State devolving as bona vacantia, for want of a rightful owner."
12. In Section of a new Schedule in Act XIV of 1996: Schedule I of the said Act shall be renumbered as Schedule I-A and before the said Schedule as so renumbered, the following Schedule shall be inserted, namely:
 1. Qualifications.... No person shall be eligible for elections to the office of the Sadar-e-Riyasat, unless he:
 (a) is a State Subject of Class I as defined in the State Subject Definition Notification. No. I-L/84, dated 20th April, 1927;
 (b) has completed the age of 21 years on the date of filing the nomination paper; and
 (c) is not subject to any of the disqualifications specified in rule 4 of the Jammu and Kashmir Constituent Assembly Election (Part I) Rules, 2008, for being chosen as a member of the Constituent Assembly.
 2. The Sadar-e-Riyasat shall not be a member of the Legislative Assembly of the State, or if a member

of the Legislative Assembly of the State, he shall be deemed to have vacated his seat in the House on the date he enters upon his office as the Sadar-e-Riyasat.

3. The Sadar-e-Riyasat shall hold no other office of profit.
4. Method of Election...(i) When election to the office of the Sadar-e-Riyasat becomes necessary, the Speaker of the State Legislative Assembly shall fix time and date for the holding of the election and shall cause a notice thereof to be sent to every member.
   (1) At any time before noon on the date preceding the date so fixed, any member of the State Legislative Assembly may nominate another person for election by delivering to the Speaker or any officer authorised by the Speaker in this behalf, a nomination paper in the form prescribed in the Annexure to this Schedule signed by himself as proposer and by another member as seconder.

   (2) Any person who has been so nominated may withdraw his candidature in writing addressed to the Speaker at any time before the Assembly proceeds to hold the election.

   (3) At the time fixed for selection under Sub-clause (i), the Speaker or in his absence the person presiding shall read out to the Assembly the names of the persons who have been duly nominated and have not withdrawn their candidature together with those of their proposers and seconders, and, if there is only one such candidate, shall declare him to be duly elected. If there is more than one such candidate, the Assembly shall proceed to elect the Sadar-e-Riyasat by ballot.

(4) Where there are only two candidates for election, the candidate who obtains at the ballot, the larger number of votes shall be declared elected. If they obtain an equal number of votes, the Speaker or in his absence the person presiding shall exercise his casting vote and the person in whose favour such vote is cast shall be declared elected.

(5) Where more than two candidates have been nominated and at the first ballots no candidate obtains more votes than the aggregate votes obtained by the other candidates, the candidate who has obtained the smallest number of votes shall be excluded from the election, and balloting shall proceed, the candidate obtaining the smallest number of votes at each ballot being excluded" from the election, until one candidate obtains more votes than the remaining candidates, or than the aggregate votes of the remaining candidates, as the case may be, and such candidate shall be declared elected.

(6) Where at any ballot any of three or more candidates obtain an equal number of votes and one of them has to be excluded from the election under Sub-clause (6), the determination, as between the candidates whose votes are equal, of the candidate who is to be excluded shall be by the casting vote of the Speaker or in his absence of the person presiding.

(7) The Prime Ministers of the State shall communicate the name of the person duly elected by the Assembly as the Sadar-e-Riyasat to the President of India for being recognised as the Sadar-e-Riyasat.

(8) Oath.... The Sadar-e-Riyasat shall, before entering upon his office, make and subscribe in the presence of Chief Justice of the State High Court or in his absence any judge of the High Court available on oath or affirmation in the following form, namely:

"I, A.B. swear in the name of God/solemnly affirm that I will faithfully execute the office of the Sadar-e-Riyasat. Jammu and Kashmir and will to the best of my ability preserve, protect and defend the Constitution of the State as by law established and that I will devote myself to the service and well-being of the people of the State."

ANNEXURE-D3

Text of Resolution of the Constituent Assembly pertaining to the Head of the State

1952: Fourth Session: 20th August, 1952.

Fourth Session: 20th August, 1952

RESOLUTION:

Whereas this Assembly adopted the recommendations contained in the Interim Report of the Basic Principles Committee presented on the 10th of June, 1952;

And whereas by its resolution, dated the 12th of June, 1952, this Assembly directed that the recommendations so adopted be implemented and for that purpose charged the Drafting Committee to submit appropriate proposals;

Now, therefore, in pursuance of the resolution dated the 12th of June, 1952, and having considered the report of the Drafting Committee, this Assembly resolves:

1. (i) that the Head of the State shall be the person recognised by the President of the Union on the recommendations of the Legislative Assembly of the State;

(ii) he shall hold office during the pleasure of the President;

(iii) he may, by Writing under his hand, addressed to President, resign his office; subject to the foregoing provisions, the Head of the State shall hold office for a term of five years from the date he enters upon his office.

Provided that he shall, notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office; that the recommendation of Legislative Assembly of the State in respect of the recognition of the Head of the State specified in sub-pare (i) of paragraph I shall be made by election; that the method of election to, qualifications for and all other matters pertaining to the office of the Head of the State shall be prescribed, in the Constitution, and until these are so prescribed, shall be as set out in the rules contained in the schedule annexed to this resolution;

4. that the Head of the State shall be designated as the Sadar-e-Riyasat;

5. that the Sadar-e-Riyasat shall be entitled to such emoluments, allowances and privileges as may be prescribed in the Constitution and pending the framing of the Constitution to such emoluments, allowances and privileges as may be decided by this Assembly by separate resolution;

6. that the Sadar-e-Riyasat shall exercise such powers and perform such functions as may be prescribed in the Constitution to be framed by this Constituent Assembly, and until such Constitution is framed, he shall exercise such powers and perform such functions as have hitherto been exercised by His Highness under the Jammu and Kashmir Constitution Act, 1996, as amended by Act No. XVII of 2008 (1996 less 57 1939 AD 2008 less 57 1951 AD).

7. that in the event of the occurrence of a casual vacancy in the office of the Sadar-e-Riyasat by reason of his death, resignation or otherwise, the powers and functions exercisable by the Sadar-e-Riyasat shall until the assumption of office by the newly elected Sadar-e-Riyasat in accordance with the procedure laid down in this resolution, be exercised and performed by the person recommended by the State Government for recognition as Officiating Sadar-e-Riyasat to the President of India; and

8. that this Assembly shall, in due course, provide a suitable remedy in respect of violation of the Constitution or gross misconduct by the person for the time being holding the office of the Sadar-e-Riyasat.

This Assembly further resolves:

that the Prime Minister of Jammu and Kashmir State is authorised to communicate a copy of this resolution to the Government of India for favour of appropriate action to enable its being given effect to.

ANNEXURE-D4

Text of Report of the Basic Principles Committee, 1954

The basic principles of the State Constitution will contain provisions relating to the form of the State, the Executive, the Legislature, the Judiciary, the Public Service Commission, the official Language and other ancillary matters. The recommendations of the Committee in regard to these matters are contained below:

The State of Jammu and Kashmir will comprise such territories which formed part of the State on 15th August, 1947. While retaining its autonomous character, the State will continue to remain acceded with the Union of India.

The sovereignty of the State resides in the people thereof and shall except in regard to matters specifically entrusted to the Union, be exercised on their behalf by the various organs of the State.

The governing features of the State Constitution would be based on democracy, equality, and social and economic justice. The guiding principle of the State policy would be to ensure the rebuilding of the State by harnessing all its resources for the purpose of securing a better and prosperous life for its people. In order to achieve that end, the entire economic activity of the State will be conducted in accordance with plans envisaged in New Kashmir. In order to satisfy the urge of the people of the State for an intimate association with administration at all levels, the Constitution shall embody suitable provisions to that effect.

Suitable provisions shall also be made enabling the people to develop their various cultures, languages and scripts and to promote closer association and better understanding amongst themselves.

Based on the decision of the Constituent Assembly for the termination of the Hereditary Rulership in the State, the Head of the State will be a person designated as the Sadar-e-Riyasat whose election and other terms of office will be regulated in accordance with the solution of the Constituent Assembly dated 21st August, 1952.

The superintendence, direction and control of the Government will vest in a council of Ministers headed by the Prime Minister who will be appointed by the Sadar-e-Riyasat. The Prime Minister will be the person who enjoys the confidence of the State Legislative Assembly. The Council of Ministers will be collectively responsible to the State Legislative Assembly.

The State Legislative Assembly will be composed of members chosen by direct election who will represent constituencies determined by law. The determination of constituencies will be on population basis and on the scale of one member for every 40,000 of the population.

Election to the State Legislative Assembly shall be on the basis of adult suffrage, that is to say, every male or female who has attained the age of 18 years and is not otherwise disqualified under the constitution or any Law made by the State Legislative Assembly on grounds of non-residence, unsoundness of mind, crime or corrupt or illegal practice shall have the right to vote. The State Legislative Assembly will have powers to make laws for the State, in respect of all matters falling within the sphere of its residuary sovereignty. Its life will be five years. Provision for the rights, powers and privileges of the members and the Committees of the Assembly should be made on the lines of the corresponding provisions of the Constitution of India. The superintendence, direction and control of all elections to the State Legislative Assembly including the appointment of Election Tribunals will vest in a Commission to be appointed by the Sadar-e-Riyasat. Provision will also have to be made for a fixed period to promote with special care the interests of the weaker sections of the people by ensuring their representation in the Assembly.

The Judiciary of the State will be independent of executive. The High Court of Judicature shall consist of the Chief Justice and two or more other judges as the Sadar-e-Riyasat may from time to time appoint. In order to ensure the independent and impartial character of the High Court, a judge of the High Court will not be removed from his office except by an order of Sadar-e-Riyasat passed after an address by the National Assembly supported by a majority of the total membership of the National Assembly and by a majority of the total membership of the National Assembly and by a majority not less than two-thirds of the members of the House present and voting, has been presented to the Sadar-e-Riyasat in the same session for such removal, on the ground of proved misbehaviour or incapacity.

Provisions will also have to be made for the terms and conditions of service of High Court Judges commensurate with the independence and dignity of the High Court.

The High Court will be a Court of Record and shall have all the powers of such Court including the power to punish for contempt of itself. The High Court shall have the same powers and jurisdiction as are exercised by it at present under the Constitution or any other law in force in the State. Provisions in this respect will be modelled on those contained in the existing Constitution of the State and the relevant parts of the Constitution of India.

Adequate provisions shall also be made in the Constitution for ensuring independence and integrity of the subordinate Courts.

An appeal shall lie to the Supreme Court of India from a judgement, decree or final order of the High Court in Civil proceedings if the High Court certifies that the amount or value of the subject matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than 90,000 rupees or that the case is a fit one for appeal to the Supreme

Court. Similarly, an appeal shall lie to the Supreme Court of India in criminal matters if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death or has withdrawn for trail before itself any case from any subordinate court and has in such trial convicted the accused person and sentenced him to death and lastly if the High Court certifies that the case is a fit one for appeal to the Supreme Court. An appeal shall also lie to the Supreme Court of India in certain civil, criminal or other proceeding if the High Court certifies that the case involves a substantial question of law as to the interpretation of the provisions of the Constitution of India which apply to the State under Article 370 of the Constitution. The original jurisdiction of the Supreme Court will extend to disputes between the Centre and State or States interest as specified in Article 131 of the Constitution of India.

Provision with regard to the establishment of a public Service Commission should be made in the Constitution. The appointment of its Chairman and members will be made by the Sadar-e-Riyasat. It will function independent of executive. Its Chairman and other members will be removable from office in the manner provided for the removal of a High Court judge.

The official Language of the State will be Urdu, but English language may be used for all official purposes for which it is being used at present. The Constitution should also recognise the regional languages of the various cultural units of the State.

Further provisions relating to the transitional and ancillary matters should be incorporated in the Constitution. Necessary provisions should also be incorporated in the Constitution ensuring that an amendment of the Constitution shall be made only by two-thirds majority of the total membership of the Assembly.

The State of Jammu and Kashmir having acceded to the Union of India, it becomes necessary to define the relationship of the State with Centre. This relationship was originally based on the Instrument of Accession, whereby the State of Jammu and Kashmir acceded to the Union of India in matters of Defence, Foreign Affairs and Communication.

When the dominion of India became a republic, the relationship of the State with the Union was embodied in Article 370 of the Union Constitution. The State's accession to the Union entails certain responsibilities on the Centre for protecting the interests of the State and also for its social and economic development. In order to enable the Centre to discharge its responsibilities which devolve upon it under the Constitution, those provisions of the Constitution of India which may be necessary for this purpose should be made applicable to the State in an appropriate manner. While preserving the internal autonomy of the State, all the obligations which flow from the fact of accession and also its elaborations as contained in the Delhi Agreement should find an appropriate place in the Constitution. The Committee is of the opinion that it is high time that finality in this respect should be reached and the relationship of the State with the Union should be expressed in clear and precise terms. The Committee accordingly recommends:

(i) that a directive be issued to the Drafting Committee to bring up appropriate proposals defining the sphere of Union Jurisdiction in the State suggesting additions, modifications and amendments wherever necessary in the Constitution (Application to Jammu and Kashmir) Order, 1950 to suit requirements of the State;

(ii) that the Drafting Committee should forthwith take up the drafting of the Constitution for the State in the light of the recommendations contained in this report and such other reports as have been or are adopted by this Assembly from time to time.

ANNEXURE-D5

1. Short Title and Commencement.

(1) This Act may be called the Jammu and Kashmir Constitution (Amendment) Act, 2011.

(2) Except as hereinafter provided, the provisions of this Act shall be deemed to have **come into force from 14th May, 1954.**

(3) Insertion of new part after Section 5:...After Section 5 of the Jammu and Kashmir Constitution Act, 1996 (hereinafter referred to as 'the said Act'), the following new part shall be inserted, namely:

PART I (A)
PERMANENT RESIDENTS

5-A. Every person who is or is deemed to be a citizen of India under the provisions of Part II of the Constitution of India as applied to the State of Jammu and Kashmir under the Constitution (Application to Jammu and Kashmir) Order, 1954, shall be a permanent resident of the State of Jammu and Kashmir if at the date of commencement of the Jammu and Kashmir Constitution (Amendment) Act, 2011, namely the 14th of May, 1954;

(a) he was a State Subject of Class II as defined in the State Subject Notification No. IL/84 dated 20th April, 1927 read with Notification No. 13/L dated 27th June, 1932, or

(b) after having acquired immovable property in the Jammu and Kashmir State in pursuance of an Ijazatnama granted under the Ijazatnama Rules for the time being in force, he has been ordinarily resident in the territory of the State for not less than ten years prior to the date of such commencement.

Explanation

All persons who before the commencement of the Constitution (Application to Jammu and Kashmir) Order 1954 were State Subjects of Class I or Class II as defined in the State Subject Notification No, I-L/84 dated 20th April, 1927, read with Notification No. 13/L dated 27th June, 1932, and who having migrated after the first day of March, 1947, to the territory now included in Pakistan return to the State under permit for settlement in the State or permanent return issued by or under the authority of any law made by the State Legislature shall continue to be deemed permanent residents of the State.

Status of permanent residentship of certain juristic persons:... 5-B. Notwithstanding anything contained in the foregoing provisions, of this Act, every Company, which, immediately before the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, was recognised to be a State Subject within the meaning of State Subject Notification No. I-L/84 dated 20th April, 1927 shall be deemed to be a permanent resident at such commencement.

Explanation

12/27/12 Legal Document No. 139

www.kashmir-information.com/LegalDocs/139.html

In this section, "Company" shall have meaning assigned to it in the Jammu and Kashmir Companies Act, 1927.

Continuance of the Status of permanent residentship..5-C Every person who is or who is deemed to be a permanent resident of the State of Jammu and Kashmir shall subject to the provisions of any law that may be made by the State Legislature, continue to be such permanent resident.

State Legislature to define and regulate the rights of permanent residents by 2/3rds majority:...5-D. The power of the State Legislature to define the term permanent resident of the State and to regulate their special rights and privileges shall be exercisable only by a majority of not less than two-thirds of the total membership of the Legislative Assembly.

State Legislature to make Laws respecting the acquisition of the status of permanent resident:... 5-E. Nothing contained in the foregoing provisions shall derogate from the power of the State Legislature to make such laws as it thinks fit with respect to the acquisition of the status of the permanent residents and until the State Legislature enacts provisions in that behalf, the existing Ijazatnama Rules shall continue to remain in for and the existing procedure for obtaining a State Subject Certificate shall be followed for the purpose of securing the certificate of being a permanent resident of the State.

Reference to the term State Subject:... 5-F. Unless the context otherwise requires, all references in the existing laws of the State to the expression 'State Subject' shall be construed as references to the "permanent residents of the State".

3. Amendment of Section 23 Act XIV of 1996:... In Section 23 of the said Act for the words 'State Subjects', the words "permanent residents of the State" shall be substituted.

4. Amendment of Section 29, Act XIV of 1996:... Section 29 of the said Act shall be **numbered as Sub-section (I) of the said Section and after Sub-section (I) as so renumbered**, the following Sub-section shall be added, namely:

"Powers, Privileges and Immunities of the Legislative Assembly and its Members and Committee—(2) in other respects, the powers, privileges and immunities of the Legislative Assembly and the Members and the Committees thereof shall be such as may from time to time be defined by law and until so defined shall be those of the Parliament of India and its Members and Committees."

5. Amendment of Section 31, Act XIV of 1996:... In Sub-section (3) of Section 31 of the said Act for the words "then become an Act and have the force of law", the words "become an Act and have the force of law as soon as it is published in either of the aforesaid languages" shall be substituted.

6. Amendment of Section 37, Act XIV of 1996...In Section 37 of the said Act, for the words "a member of Board of Judicial Advisors" the words "any Judge of the Supreme Court of India" shall be substiuted.

7. Amendment of Section 43, Act XIV of 1996...In Section 43 of the said Act:

(i) in Clause (c), the words "and the members of Board of Judicial Advisors" shall be deleted and (ii) after Clause (d), the following new Clause shall be inserted, namely:

"(dd) The salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly."

8. Amendment of Section 54, Act XIV of 1896...In Section 54 of the said Act, for the words "Coat of Arms", the words "State Emblem" shall be substituted.

9. Amendment of Section 56, Act, XIV of 1996. In Sub-section (2) of Section 55 of the said Act, for the words "Rupees

ten thousand", the words "Rupees twenty thousand" shall be substituted.

(ii) this section shall come into force from the date of publication of this Act in the Government Gazette.

10. Omission of Section 62, Act XIIV of 1996—Section 62 of the said Act shall be omitted.

11. Insertion of new Section after Section 62, Act XIV of 1996—After Section 62 of the said Act, the following new Section shall be inserted, namely:

"62A. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Act or the Constitution of India as applied to the State by the Constitution (Application to Jammu and Kashmir) Order, 1846, the determination of which is necessary for the case, it shall withdraw the case and may—

(a) either dispose of the case itself, or

(b) determine the said question of law and return the case to the Court from which the case has been so withdrawn together with a copy of its judgement on such question and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgement.

12. Insertion of new Section 66-A, Act XIV of 1996... After Section 66 of the said Act, the following new Section shall be inserted, namely:

"66-A. If at any time, it appears to the Council that a question of law or fact has arisen, or is likely to arise, which, if of such a nature and of such public importance that it is expedient to obtain the opinion of the High Court upon it, it may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the Council its opinion thereon."

13. Omission of Section 71, Act XIV of 1996... Section 71 of the said Act shall be omitted.

14. Omission of Section 75, Act XIV of 1996... Section 75 of the said Act shall be omitted.

15. Insertion of new Section 76-A, Act XIV of 1996... After Section 76 of the said Act, the following new Section shall be inserted, namely:

"Saving as regards Letters Patent 76-A:...The provision of the Letters Patent granted to the High Court on 28th May, 1943 shall continue to remain in force except insofar as these are inconsistent with the provisions of this Act or of any other law for the time being in force."

16. Amendment of Schedule I-A, Act XIV of 1996...In form "C" of Schedule I-A of the said Act, the words "for the members of the Board of Judicial Advisors and", occurring in the long title, and the words "President/a member of the Board of Judicial Advisors", in the text of the oath shall be omitted.

ANNEXURE-E

Text of Former CJ of India, Adarsh Sen's opinion on Instrument Accession as available in media

Former Chief Justice of India

Adarsh sen Anand's Verdict

The Instrument of Accession was in no way different from the ones executed by the other states of India. It was unconditional, voluntary and absolute. It was not subject to any exceptions. It bound the state of Jammu & Kashmir and India together legally and constitutionally. The execution of the Instrument of Accession by the Maharaja and its acceptance by the Governor General settled the issue of Accession of the State of Jammu & Kashmir (these two documents, i.e., offer of instrument to India and its acceptance from the Governor General, Government of India, which are the two documents only which carry a legal weight)

After accepting the Instrument of Accession, Lord Mountbatten wrote a personal letter to Maharaja in reply to his letter which had accompanied the Instrument of Accession but was not a part of the Instrument of Accession. In his letter, Lord Mountbatten wrote:

"My Government has decided to accept the accession of Kashmir state to the dominion of India. In consistence with their policy that in the case of any state where the issue of accession has been the subject dispute of the question of accession should be decided in accordance with the wishes of people of the state, it is my Government's wish that as soon as law and order has been restored in Kashmir and its soil cleared of the invaders, the question of state accession should be settled by a reference to the people."

It figured as a controversial feature of Kashmir's accession to India, The critics of the accession have steadfastly maintained that this stipulation renders the accession conditional and that the question of state's accession has to be settled by a reference to the people of the State. That, however, is not so. The 'wish' was at the most a pious hope. It did not render the accession conditional, the only documents relevant to the accession were the Instrument of accession and the Indian Independence Act and both the constitutional documents did not contemplate any conditions and, therefore, there was no question of the accession being the conditional.

Mr. Mehar Chand Mahajan (Accession of Kashmir to India; The inside story page 19 to 21) rightly opined that "finality which is statutory cannot be made contingent on conditions imposed outside the powers of statue. Any sider which militates against the finality is clearly ultraviolet and has to be rejected."

The Ruler of Jammu & Kashmir never accepted the view of Lord Mountbatten. That 'wish', therefore, had no legal effect. Pakistan, however, to suit itself refused to recognise the accession as an act of "cowardly ruler" engendered with the 'aggressive' help of the Indian Government. It charged that the accession had been obtained by force. The official organ of Muslim League. Dawan on 5th November, 1947 from Karachi quoted Mr. Liaqat Ali Khan saying that:

"We do not recognise the decision the accession of Kashmir to India is a fraud perpetrated on the people of Kashmir by its cowardly Ruler with the aggressive help of the Indian Government."

Alan Cambell Johnson, in his treatise Mission with Mountbatten, writes:

"Indeed the State's minority under Patel's direction went out of its way to take no action which would be interpreted as forcing Kashmir's hand and to give assurances that accession to Pakistan would not be taken amiss by India."

On the return to London, Lord Mountbatten narrated:

"Had he (The Maharaja of Kashmir) acceded to Pakistan before 14th August, the future Government of India had allowed me to give his Highness an assurance that no objection whatever would be raised by them."

Moreover, it cannot be denied that the Maharaja of Kashmir offered to accede to the Indian dominion after the assaults and raids had started on the State from across the borders. When at his meeting with Lord Mountbatten on 1st November, 1947, Mr. Jinnah claimed that the accession of Kashmir to India was based on violence, Lord Mountbatten replied, "The accession had indeed been brought about by violence, but the violence came from tribesmen from whom Pakistan and not India was responsible."

The accession of the State of Jammu & Kashmir to India imposed an obligation on the dominion of India to defend the State. To drive the invaders out of the state was the task which the dominion of India was asked to face as soon as it finally accepted the Instrument of Accession. The request and warnings of Government of India to the Government of Pakistan to deny assistance and bases to the invaders met with no response. India, therefore, decided to lodge a complaint with the UN Security Council.

ANNEXURE-F1

Article 35 and 35A of the Constitution of India, 1949

35. Legislation to give effect to the provisions of this Part notwithstanding anything in this Constitution:

(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws (i) with respect to any of the matters which under Clause (3) of Article 16, Clause (3) of Article 32, Article 33 and Article 34 may be provided for by law made by the Parliament; and (ii) for prescribing punishment for those acts which are declared to be offences under this Part; and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in Sub-clause (ii);

(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in Sub-clause (i) of Clause (a) or providing for punishment for any act referred to in Sub-clause (ii) of that Clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under Article 372, continue in force until altered or repealed or amended by Parliament Explanation. In this article, the expression law in force has the same meaning as in Article 372 PART IV DIRECTIVE PRINCIPLES OF STATE Policy.

THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDER, 1954

(i) In Article 35:

(i) references to the commencement of the Constitution shall be construed as references to the commencement of this Order;

(ii) in Clause (a) (i), the words, brackets and figures "Clause (3) of Article 16, Clause (3) of Article 32" shall be omitted; and

(iii) after Clause (b), the following Clause shall be added, namely: "(c) no law with respect to preventive detention made by the Legislature of the State of Jammu and Kashmir, whether before or after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, shall be void on the ground that it is inconsistent with any of the provisions of this part, but any such law shall, to the extent of such inconsistency, cease to have effect on the expiration of twenty-five years from the commencement of the said Order, except as respects things done or omitted to bed one before the expiration thereof."

(j) After Article 35, the following new Article shall be added, namely:

"35A. Saving of laws with respect to permanent residents and their rights. Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State:

(a) defining the classes of persons who are, or shall be permanent residents of the State of Jammu and Kashmir; or

(b) conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects:

(i) employment under the State Government;
(ii) acquisition of immovable property in the State;
(iii) settlement in the State; or
(iv) right to scholarships and such other forms of aid as the State Government may provide, shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part."

ANNEXURE-F2

Text of Resolution, National Conference, 1950

This meeting of the General Council of the All Jammu and Kashmir National Conference views with great concern the repeated failure of the U.N. to redress the wrongs of aggression of which the people of the State continue to be victims. This failure in its opinion is due to the continued concessions given to Pakistan by placing a premium on her intransigence.

The indecision and unrealistic procedure adopted so far has condemned the people of the State to a life of agonising uncertainty. The All Jammu and Kashmir National Conference is gravely concerned and cannot any longer afford to ignore the perpetuation of these conditions of doubt and frustration. In the opinion of the General Council, time has come when the initiative must be regained by the people to put an end to this indeterminate State of drift and indecision.

The General Council recommends to the Supreme National Executive of the people to take immediate steps for convening a Constituent Assembly based upon adult suffrage and embracing all sections of the people and all the Constituents of the State for the purpose of determining the future shape and affiliations of the State of Jammu and Kashmir. In this sovereign Assembly embodying the supreme will of the people of the State, we shall give ourselves and our children a constitution worthy of the traditions of our freedom struggle and in accordance with the principles of New Kashmir.

ANNEXURE-G1

Some relevant portions of the Address by Lord Mount Louis Mountbatten

Representative of the British Crown > to a Special Full Meeting of the Chamber of Princes on 25th July, 1947

"...It took two years to separate the province of Orissa from Bihar. Gentlemen, we decided that in less than two-and-a-half months, we shall have to go through the partitioning of one of the biggest countries in the world with 400 million inhabitants. There was a reason for the speed. I was quite certain that while the British overlordship remained, no satisfactory conclusion could be reached psychologically between parties. So, once we got the two governments set up and separated, we would be able to try and finish out the details in an atmosphere of goodwill.

Now the Indian Independence Act releases the States from all their obligations to the Crown. The States will have complete freedom... technically and legally they become independent.... The first step was to set up some machinery by which it was possible to put the two future Governments of India. The Dominion of India and Pakistan... into direct touch with the States. So, I conceived the scheme of setting up two States departments within the future Governments. ... the States Departments are to take over those subjects gradually which have nothing to do with paramountcy but which will be concerned with relations with neighbouring States and also provide the machinery to negotiate in such matters. In India, States Department is under the admirable guidance of Sardar Vallabh Bhai Patel with my own Reforms Commissioner, Mr. V.P. Menon, as Secretary. In Pakistan, the department is under Sardar Abdur Rab Nishtar with Mr. Ikramullah as Secretary.... But when I say that they are at liberty to link up with either of the Dominions, may I point out that there are certain geographical compulsions which cannot be evaded?

Out of something like 563 States, the vast majority are irretrievably linked geographically with the Dominion of India. The problem, therefore, is of greater magnitude with the Dominion of India than it is with Pakistan. In case of Pakistan++ the states though important are not so numerous, and Mr. Jinnah, the future GG of Pakistan, is prepared to negotiate the case of each State separately and individually. But in the case of India, where the overwhelming majority of States are involved, clearly separate negotiations with each State is out of question. The first step that I took was to suggest that in the Bill before Parliament ...the Indian Independence Act... a Clause should be put which would enable certain agreements to continue until renounced by either side. That was only done to ensure that there should be some continuity if in short time available it was not possible to get the agreement through with every State representative. It does not replace the need for stand-still agreement; it gives a small breathing time. ... Now I say it is no exaggeration to say that most Rulers and Dewans were apprehensive as to what be when paramountcy lapsed.... You can imagine how relieved I was, and I am sure you will yourself have been equally relieved, when Sardar Vallabh Bhai Patel on taking over the States Department made, if I may say so, a most statesmanlike statement of what he considered were the essentials towards agreement between the States and Dominion of India. **Let us turn for one moment to the Cabinet Mission of 16th May, 1946.** In this Plan, the proposal was that the States should surrender to the Central Government three subjects - Defence, External Affairs and Communication. That was a plan, that to my belief every Ruler and State accepted as reasonable, fair and just. ...Therefore I am sure you will agree that these three subjects have got to be handled for you for your convenience and advantage by a larger organisation...The draft Instrument of Accession which I have caused to be circulated as a basis for discussion {and for publication} to the representatives of the States provided that the States accede to the appropriate Dominion on three subjects only without any financial liability.

But many may be surprised to learn that New Delhi has not been able carry the fact down to people that the draft instrument of accession proposed all the Princely States had the same subjects and text.

ANNEXURE-G2

THE MERGED STATES (LAWS) ACT, 1949. ACT No. 59 OF 1949 1* [26th December, 1949]

An Act to extend certain laws to certain areas administered as parts of Governor's Provinces or as Chief Commissioner's Provinces.

WHEREAS by Orders under section 290A of the Government of India Act, 1935, (25 and 26 Geo. 5, c. 2.) provision has been made for the administration of certain areas either as if they formed part of an adjoining Governor's Province or as if they were a Chief Commissioner's Province;

AND WHEREAS it is expedient to provide that certain laws should be extended to, and by virtue of such extension, be in force in the said areas; It is hereby enacted as follows:

1. Short title and commencement.

(1) This Act may be called the Merged States (Laws) Act, 1949. (2) It shall come into force on the 1st day of January, 1950.

2. Definitions.

In this Act,

(a) the expressions "absorbing Province" and "merged State" have the same meanings as in the States Merger

(Governor's Provinces) Order, 1949, 2* as amended by the States Merger (United Provinces) Order, 1949, 3*; and

(b) the expression "new Provinces" means the Chief Commissioner's Provinces constituted by the States Merger (Chief Commissioner's Provinces) Order, 1949, 4* as amended by the States Merger (United Provinces) Order, 1949.

3. Extension of laws. (1) The Acts, Ordinances and Regulation specified in the Schedule are hereby extended to, and shall be in force in, all the new Provinces.

1. This Act was not adapted by the A.O. 1950.
2. See S.O. 25, Gazette of India, 1949, Extraordinary, p. 1317.3. See S. O. 27, ibid., p. 2611.4. See S.O. 26, ibid., p. 1343.116.(2) So much of any of the Acts, Ordinances and Regulation specified in the Schedule as extends to any absorbing Province and relates to matters with respect to which the Dominion Legislature has power to make laws for a Governor's Province is hereby extended to, and shall be in force in, all the merged States which are now administered as part of that Province.
3. If any of the said Acts, Ordinances and Regulation as in force in any absorbing Province immediately before the commencement of this Act is subject to any amendments made by the Legislature of that Province, that Act, Ordinance or Regulation shall be deemed to be extended to, and to be in force in, all the merged States which are now administered as part of that Province, subject to so much of the said amendments as relate to matters with respect to which the Dominion Legislature has power to make laws for a Governor's Province.

4. Interpretation of laws as extended.

In any Act, Ordinance or Regulation specified in the Schedule, notwithstanding anything contained in the General Clauses Act, 1897, (10 of 1897)—

(a) any reference, by whatever form of words, to the acceding States shall be construed as not including a reference to any of the merged States or to any of the States (other than the United State of Saurashtra) mentioned in the States Merger (Chief Commissioner's Provinces) Order, 1949 as amended by the States Merger (United Provinces) Order, 1949;

(b) any reference, by whatever form of words, to Indian British subjects shall be deemed to include a reference to persons who, immediately before the 1st day of August, 1949, were subjects of any of the merged States or of any of the States (other than the United State of Saurashtra) mentioned in the States Merger (Chief Commissioner's Provinces) Order, 1949, as amended by the States Merger (United Provinces) Order, 1949;

(c) any reference, by whatever form of words, to the Provinces generally or to the Chief Commissioner's Provinces generally shall be construed as including a reference to the new Provinces; and

(d) any reference, by whatever form of words, to an absorbing Province shall be construed as including a reference to the merged States which are now administered as part of that Province.

117.5. Repeal of corresponding laws.

If immediately before the commencement of this Act there is in force in any of the new Provinces or merged States an Act, Ordinance, Regulation or other law corresponding to an Act, Ordinance or Regulation specified in the Schedule, whether such Act, Ordinance or Regulation is in force by virtue of an Order under the Extra-Provincial Jurisdiction Act, 1947, (47 of 1947) or by virtue of any other legislative power, such corresponding law shall upon the commencement of this Act,—

(a) in a new Province, stand repealed, and

(b) in a merged State, stand repealed to the extent to which the law relates to matters with respect to which the Dominion Legislature has power to make laws for a Governor's Province.

6. Savings.

(1) The repeal by Section 5 of this Act of any corresponding

law in force in the new Provinces or merged States immediately before the commencement of this Act shall not affect—

(a) the previous operation of any such law, or

(b) any penalty, forfeiture or punishment incurred in respect of any offence committed against any such law, or

(c) any investigation, legal proceeding or remedy in respect of any such penalty, forfeiture or punishment, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

(2) Subject to the provisions of Sub-section (1), anything done or any action taken, including any appointment or delegation made, notification, order, instruction or direction issued, rule, regulation, form, bye-law or scheme framed, certificate, patent, permit or license granted or registration effected, under such corresponding law shall be deemed to have been done or taken under the corresponding provision of the Act, Ordinance or Regulation as now extended to, and in force in, the new Province or merged State and shall continue in force accordingly unless and until superseded by anything done or any action taken under the said Act, Ordinance or Regulation.

7. Powers of Courts and other authorities for purposes of facilitating application of laws.

For the purpose of facilitating the application in any of the new Provinces or merged States of any Act, Ordinance or Regulation specified in the Schedule, any Court or other authority may construe any such Act, Ordinance or Regulation with such alterations, not affecting the substance, as may be necessary or proper to adapt it to the matter before the Court or other authority.

118. LAWS EXTENDED TO THE NEW PROVINCES AND MERGED STATES

THE SCHEDULE [See Section 3]

LAWS EXTENDED TO THE NEW PROVINCES AND MERGED STATES

Year Number Short title

Acts 1839 XXXII... The Interest Act, 1839.1841 X... The Indian Registration of Ships Act, 1841.1850 XI... The Indian Registration of Ships Act (1841) Amendment Act, 1850.1850 XVIII... The Judicial Officers Protection Act, 1850.1850 XIX... The Apprentices Act, 1850.1850 XXI... The Caste Disabilities Removal Act, 1850.1850 XXXIV... The State Prisoners Act, 1850.1850 XXXVII... The Public Servants (Inquiries) Act, 1850.1855 XII... The Legal Representatives Suits Act, 1855.1855 XIII... The Indian Fatal Accidents Act, 1855. 1856 IX... The Indian Bills of Lading Act, 1856.1856 XV... The Hindu Widows Re-marriage Act, 1856.1857 XIII... The Opium Act, 1857.1858 III... The State Prisoners Act, 1858.1860 XXI... The Societies Registration Act, 1860.1860 XLV... The Indian Penal Code, 1860.1861 V... The Police Act, 1861.1862 III... The Government Seal Act, 1862.1863 XXIII... The Waste-lands (Claims) Act, 1863.1865 III... The Carriers Act, 1865.1866 XXI... The Native Converts Marriage Dissolution

Act, 1866.1867 XVI... The Acting Judges Act, 1867.1867 XXV... The Press and Registration of Books Act, 1867. 1869 IV... The Indian Divorce Act, 1869.1870 VII... The Court-fees Act, 1870.1871 I... The Cattle-tresspass Act, 1871.1871 XXIII... The Pensions Act, 1871.1871 XXXI... The Indian Weights and Measures of Capacity Act, 1871.1872 I... The Indian Evidence Act, 1872.1872 III... The Special Marriage Act, 1872.1872 IX... The Indian Contract Act, 1872.1872 XV... The Indian Christian Marriage Act, 1872. 1873 V... The Government Savings Banks Act, 1873.1873 X... The Indian Oaths Act, 1873.1874 III... The Married Womens Property Act, 1874.

119.

Year Number Short title

1874 IV... The Foreign Recruiting Act, 1874.1875 IX... The Indian Majority Act, 1875.1875 XVIII... The Indian Law Reports

Act, 1875.1877 I... The Specific Relief Act, 1877.1878 I... The Opium Act, 1878.1878 VI... The Indian Treasure-trove Act, 1878.1878 VIII... The Sea Customs Act, 1878.1878 XI... The Indian Arms Act, 1878.1879 XVIII... The Legal Practitioners Act, 1879.1880 I... The Religious Societies Act, 1880.1880 XIII... The Vaccination Act, 1880.1881 XI... The Municipal Taxation Act, 1881.1881 XXVI... The Negotiable Instruments Act, 1881.1882 II... The Indian Trusts Act, 1882.1882 IV... The Transfer of Property Act, 1882.1882 VII... The Powers-of-Attorney Act, 1882.1884 IV... The Indian Explosives Act, 1884.1885 XVIII... The Land Acquisition (Mines) Act, 1885.1886 VI... The Births, Deaths and Marriages Registration Act, 1886.1886 XI... The Indian Tramways Act, 1886.1887 VII... The Suits Valuation Act, 1887.1887 IX... The Provincial Small Cause Courts Act, 1887. 1888 III... The Police Act, 1888.1889 IV... The Indian Merchandise Marks Act, 1889.1890 I... The Revenue Recovery Act, 1890.1890 VI... The Charitable Endowments Act, 1890.1890 VIII... The Guardians and Wards Act, 1890.1890 XI... The Prevention of Cruelty to Animals Act, 1890.1891 XVIII... The Bankers Books Evidence Act, 1891.1893 IV... The Partition Act, 1893.1894 I... The Land Acquisition Act, 1894.1894 IX... The Prisons Act, 1894.1897 III... The Epidemic Diseases Act, 1897.1897 IV... The Indian Fisheries Act, 1897.1897 X... The General Clauses Act, 1897.1898 III... The Lepers Act, 1898.1898 V... The Code of Criminal Procedure, 1898.1898 VI... The Indian Post Office Act, 1898.1898 IX... The Live-stock Importation Act, 1898.1899 II... The Indian Stamp Act, 1899.1899 IV... The Government Buildings Act, 1899.1900 III... The Prisoners Act, 1900.

120.

Year Number Short title

1901 II... The Indian Tolls (Army and Air Force) Act, 1901.1903 VII... The Indian Works of Defence Act, 1903.1903 XIV... The Indian Foreign Marriage Act, 1903.1903 XV... The Indian Extradition Act, 1903.1904 VII... The Ancient Monuments

Preservation Act, 1904.1905 IV... The Indian Railway Board Act, 1905.1906 III... The Indian Coinage Act, 1906.1908 V... The Code of Civil Procedure, 1908.1908 VI... The Explosive Substances Act, 1908.1908 IX... The Indian Limitation Act, 1908.1908 XIV... The Indian Criminal Law Amendment Act, 1908. 1908 XV... The Indian Ports Act, 1908.1908 XVI... The Indian Registration Act, 1908.1909 IV... The Whipping Act, 1909.1909 VII... The Anand Marriage Act, 1909.1910 IX... The Indian Electricity Act, 1910.1911 II... The Indian Patents and Designs Act, 1911.1911 VIII... The Indian Army Act, 1911.1911 X... The Prevention of Seditious Meetings Act, 1911. 1912 IV... The Indian Lunacy Act, 1912.1913 II... The Official Trustees Act, 1913.1913 III... The Administrator Generals Act, 1913.1913 VI... The Mussalman Wakf Validating Act, 1913.1913 VII... The Indian Companies Act, 1913.1914 II... The Destructive Insects and Pests Act, 1914. 1914 III... The Indian Copyright Act, 1914.1914 IX... The Local Authorities Loans Act, 1914.1916 VII... The Indian Medical Degrees Act, 1916.1916 XV... The Hindu Disposition of Property Act, 1916. 1917 V... The Destruction of Records Act, 1917.1917 XVIII... The Post Office Cash Certificates Act, 1917. 1918 II... The Cinematograph Act, 1918.1918 XXII... The Bronze Coin (Legal Tender) Act, 1918. 1919 I... The Local Authorities Pensions and Gratuities Act, 1919.1919 XII... The Poisons Act, 1919.1920 V... The Provincial Insolvency Act, 1920.1920 X... The Indian Securities Act, 1920.1920 XIV... The Charitable and Religious Trusts Act, 1920. 1920 XXIII... The Indian Rifles Act, 1920.1920 XXXIII... The Identification of Prisoners Act, 1920. 1920 XXXIX... The Indian Elections Offences and Inquiries Act, 1920.1920 XLVII... The Imperial Bank of India Act, 1920.

121.

Year Number Short title

1921 XVIII... The Maintenance Orders Enforcement Act, 1921.1922 XXII... The Police (Incitement to Disaffection) Act, 1922.1923 IV... The Indian Mines Act, 1923.1923 V... The Indian

Boilers Act, 1923.1923 VI... The Cantonments (House-Accommodation) Act, 1923.1923 VIII... The Workmens Compensation Act, 1923.1923 XIV... The Indian Cotton Cess Act, 1923.1923 XIX... The Indian Official Secrets Act, 1923.1923 XXI... The Indian Merchant Shipping Act, 1923.1923 XXIII... The Legal Practitioners (Women) Act, 1923. 1923 XLII... The Mussalman Wakf Act, 1923.1924 II... The Cantonments Act, 1924.1924 IV... The Central Board of Revenue Act, 1924.1924 XIX... The Land Customs Act, 1924.1925 IV... The Indian Soldiers (Litigation) Act, 1925. 1925 XII... The Cotton Ginning and Pressing Factories Act, 1925.1925 XIX... The Provident Funds Act, 1925.1925 XXVI... The Indian Carriage of Goods by Sea Act, 1925.1925 XXXIX... The Indian Succession Act, 1925.1926 III... The Government Trading Taxation Act, 1926.1926 VII... The Indian Naturalization Act, 1926.1926 XII... The Contempt of Courts Act, 1926.1926 XVI... The Indian Trade Unions Act, 1926.1926 XXI... The Legal Practitioners (Fees) Act, 1926. 1926 XXXVIII... The Indian Bar Councils Act, 1926.1927 XVI... The Indian Forest Act, 1927.1927 XVII... The Indian Lighthouse Act, 1927.1928 XII... The Hindu Inheritance (Removal of Disabilities) Act, 1928.1929 II... The Hindu Law of Inheritance (Amendment) Act, 1929.1929 XIX... The Child Marriage Restraint Act, 1929.1930 II... The Dangerous Drugs Act, 1930.1930 III... The Indian Sale of Goods Act, 1930.1930 XXIV... The Indian Lac Cess Act, 1930.1930 XXX... The Hindu Gains of Learning Act, 1930.1930 XXXII... The Mussalman Wakf Validating Act, 1930.1931 XVI... The Provisional Collection of Taxes Act, 1931. 1931 XXIII... The Indian Press (Emergency Powers) Act, 1931. 1932 IX... The Indian Partnership Act, 1932.1932 XII... The Foreign Relations Act, 1932.1932 XIV... The Indian Air Force Act, 1932.

122.

Year Number Short title

1932 XX... The Port Haj Committees Act, 1932.1932 XXII... The Tea Districts Emigrant Labour Act, 1932.1932 XXIII... The

Criminal Law Amendment Act, 1932.1933 II... The Children (Pledging of Labour) Act, 1933. 1933 XXVII... The Indian Medical Council Act, 1933.1934 II... The Reserve Bank of India Act, 1934.1934 VIII... The Khaddar (Name Protection) Act, 1934.1934 XIX... The Indian Dock Labourers Act, 1934.1934 XX... The Indian Carriage by Air Act, 1934.1934 XXII... The Indian Aircraft Act, 1934.1934 XXX... The Petroleum Act, 1934.1934 XXXII... The Indian Tariff Act, 1934.1934 XXXIV... The Indian Navy (Discipline) Act, 1934.1936 III... The Parsi Marriage and Divorce Act, 1936.1936 IV... The Payment of Wages Act, 1936.1937 I... The Agricultural Produce (Grading and Marking) Act, 1937.1937 XVIII... The Hindu Womens Rights to Property Act, 1937.1937 XIX... The Arya Marriage Validation Act, 1937.1937 XXV... The Federal Court Act, 1937.1937 XXVI... The Muslim Personal Law (Shariat) Application Act, 1937.1938 IV... The Insurance Act, 1938.1938 V... The Manoeuvres, Field Firing and Artillery Practice Act, 1938.1938 VIII... The Indian Tea Control Act, 1938.1938 XX... The Criminal Law Amendment Act, 1938.1938 XXIV... The Employers Liability Act, 1938.1938 XXVI... The Employment of Children Act, 1938.1939 IV... The Motor Vehicles Act, 1939.1939 VIII... The Dissolution of Muslim Marriages Act, 1939. 1939 IX... The Standards of Weight Act, 1939.1939 XIX... The Coal Mines Safety (Stowing) Act, 1939. 1939...... The Indian Naval Reserve Forces (Discipline) Act, 1939.1940 V... The Trade Marks Act, 1940.1940 X... The Arbitration Act, 1940.

1940 XXIII... The Drugs Act, 1940.1940 XXVII... The Agricultural Produce Cess Act, 1940.1941 XIX... The Mines Maternity Benefit Act, 1941.1941 XX... The Professions Tax Limitation Act, 1941. 1941 XXI... The Federal Court Act, 1941.1941 XXV... The Railways (Local Authorities Taxation) Act, 1941.

123.

Year Number Short title

1942 VII... The Coffee Market Expansion Act, 1942.1942 XVIII... The Weekly Holidays Act, 1942.1942 XIX... The Industrial

Statistics Act, 1942.1942 XXVI... The Federal Court (Supplemental Powers) Act, 1942.1943 IX... The Reciprocity Act, 1943.1944 I... The Central Excises and Salt Act, 1944.1944 X... The Indian Coconut Committee Act, 1944.1944 XVIII... The Public Debt Act, 1944.1946 IX... The Indian Oilseeds Committee Act, 1946.1946 XVII... The Protective Duties Act, 1946.1946 XIX... The Hindu Married Womens Right to Separate Residence and Maintenance Act, 1946. 1946 XX... The Industrial Employment (Standing Orders) Act, 1946.1946 XXII... The Mica Mines Labour Welfare Fund Act, 1946. 1946 XXIV... The Essential Supplies (Temporary Powers) Act, 1946.1946 XXV... The Delhi Special Police Establishment Act, 1946.1946 XXVIII... The Hindu Marriage Disabilities Removal Act, 1946.1947 II... The Prevention of Corruption Act, 1947.1947 VII... The Foreign Exchange Regulation Act, 1947. 1947 XII... The Railways (Transport of Goods) Act, 1947. 1947 XIV... The Industrial Disputes Act, 1947.1947 XV... The Armed Forces (Emergency Duties) Act, 1947. 1947 XVI... The Trading with the Enemy (Continuance of Emergency Provisions) Act, 1947.1947 XVIII... The Imports and Exports (Control) Act, 1947. 1947 XXIV... The Rubber (Production and Marketing) Act, 1947.1947 XXIX... The Capital Issues (Continuance of Control) Act, 1947.1947 XXXI... The Antiquities (Export Control) Act, 1947. 1947 XXXII... The Coal Mines Labour Welfare Fund Act, 1947. 1947 XLIII... The United Nations (Security Council) Act, 1947.1947 XLVI... The United Nations (Privileges and Immunities) Act, 1947.1948 I... The Federal Court (Enlargement of Jurisdiction) Act, 1947.1948 VIII... The Pharmacy Act, 1948.1948 IX... The Dockworkers (Regulation of Employment) Act, 1948.1948 XI... The Minimum Wages Act, 1948.

124.

Year Number Short title

1948 XII... The Rehabilitation Finance Administration Act, 1948.1948 XV... The Industrial Finance Corporation Act, 1948.

1948 XVI... The Dentists Act, 1948.1948 XXII... The Indian Power Alcohol Act, 1948.1948 XXIX... The Atomic Energy Act, 1948.1948 XXXII... The Road Transport Corporations Act, 1948. 1948 XXXIV... The Employees State Insurance Act, 1948. 1948 XXXVII... The Census Act, 1948.1948 XL... The Indian Matrimonial Causes (War Marriages) Act, 1948.1948 XLVI... The Coal Mines Provident Fund and Bonus Schemes Act, 1948.1948 XLVII... The Displaced Persons (Institution of Suits) Act, 1948.1948 LIII... The Mines and Minerals (Regulation and Development) Act, 1948.1948 LIV... The Electricity (Supply) Act, 1948.1948 LXI... The Central Silk Board Act, 1948.1948 LXIII... The Factories Act, 1948.1949 X... The Banking Companies Act, 1949.1949 XIII... The Central Tea Board Act, 1949.1949 XXI... The Hindu Marriages Validity Act, 1949.1949 XXIII... The Influx from Pakistan (Control) Act, 1949. 1949 XXV... The Displaced Persons (Legal Proceedings) Act, 1949.1949 XXX... The Public Companies (Limitation of Dividends) Act, 1949.1949 XXXVIII... The Chartered Accountants Act, 1949. Ordinances 1940 IV... The Currency Ordinance, 1940.1941 XI... The Essential Services (Maintenance) Ordinance, 1941.1942 XLI... The Armed Forces (Special Powers) Ordinance, 1942.1944 XXXVIII... The Criminal Law Amendment Ordinance, 1944. 1944 XLII... The Post Office National Savings Certificates Ordinance, 1944.1945 XLVII... The International Monetary Fund and Bank Ordinance, 1945.1949 XI... The Industrial Tribunals Payment of Bonus (National Savings Certificates) Ordinance, 1949. Regulation 1818 III... The Bengal State Prisoners Regulation, 1818.— — — — — — Last updated date on 01.02.2008, Janpada system.

ANNEXURE-H

Text of Union Cabinet Decision as of 4th July, 2000 on Jammu and Kashmir Autonomy Resolution

The following is the Union Cabinet's response to the resolution adopted by the Jammu & Kashmiri State Assembly on 26/27th June, 2000, urging that the pre-1953 constitutional position in the State be restored.

The Government is committed to the promotion of federal harmony by ensuring a partnership of the Centre and the States as laid down in the National Agenda for Governance of the National Democratic Alliance.

The National Agenda for Governance of the NDA states in no uncertain terms that "there is a clear case for devolution of more financial and administrative powers and functions to the states." It further says that "suitable steps will be taken to ensure harmonious Centre-State relations in the light of the recommendations of the Sarkaria Commission..." In the last two years, the Government had taken several steps in this direction.

The Government reaffirms its commitment to continuing its endeavour to evolve a broad consensus on the implementation of steps for wide-ranging devolution of powers to the State that leads to efficiency in administration, acceleration in development and the fullest realisation of the creative potential of all sections of our people. The setting up of a Commission to review the Constitution is also a step in this direction.

In the above context, the Cabinet finds the resolution passed by the State Assembly of Jammu and Kashmir endorsing the report of the State Autonomy Committee unacceptable. The Cabinet feels that the acceptance of this resolution would set the clock back and reverse the natural process of harmonising the aspiration of the people of Jammu and Kashmir with the integrity of the nation.

Most of the recommendations contained in the report of the State Autonomy Committee seek to reverse the application of constitutional provisions to the State of Jammu and Kashmir which may not only adversely affect the interests of the people of the State but would also tantamount to removal of some of the essential safeguards enshrined in our Constitution. Besides, the issue of restoring the constitutional situation in Jammu and Kashmir to its pre-1953 position had been discussed in detail by Sheikh Mohammed Abdullah with Prime Minister Indira Gandhi in 1974-75. **It is noteworthy that the agreement signed after these negotiations had affirmed that "provisions of the**

Constitution of India already applied to the State of Jammu and Kashmir without adaptation or modification are unalterable".

The Cabinet urges the people and the Government of Jammu and Kashmir to join hands in the endeavour to address the real problems facing the State to root out insurgency and cross-border terrorism and to ensure accelerated development. The Centre will continue to provide all possible assistance for attaining these objectives.

The cabinet, therefore, decides not to accept the resolution passed by the Jammu and Kashmir Assembly on the report of the State Autonomy Committee. The Government is of the firm conviction that national integration and devolution of powers to States must go together.

ANNEXURE-I-1

The Text of the 1846 Treaty of Lahore

Treaty between the British Government and the State of Lahore, 1846: "Whereas the treaty of amity and concord, which was concluded between the British Government and the late Maharajah Runjeet Sing, the ruler of Lahore, in 1809, was broken by the unprovoked aggression, on the British Provinces, of the Sikh army, in December last; and whereas, on that occasion, by the proclamation, dated 13th December, the territories then in the occupation of the Maharajah of Lahore, on the left or British bank of the River Sutlej, were confiscated and annexed to the British Provinces; and since that time, hostile operations have been prosecuted by the two Governments; the one against the other, which have resulted in the occupation of Lahore by the British troops; and whereas it has been determined that, upon certain conditions, peace shall be re-established between the two Governments, the following treaty of peace between the Honourable East India Company and Maharajah Dhuleep Sing Bahadoor, and his children, heirs and successors, has been concluded on the part of the Honourable Company by Frederick Currie, Esquire, and Brevet-Major Henry Montgomery

Lawrence, by virtue of full powers to that effect vested in them by the Right Hon'ble Sir Henry Hardinge, G.C.B., one of her Britannic Majesty's Most Hon'ble Privy Council, Governor-General, appointed by the Honourable Company to direct and control all their affairs in the East Indies, and on the part of His Highness Maharajah Dhuleep Sing by Bhaee Ram Sing, Rajah Lal Sing, Sirdar Tej Sing, Sirdar Chuttur Singh Attareewalla, Sirdar Runjore Sing Majeethia, Dewan Deena Nath and Fakeer Nooroodin, vested with full powers and authority on the part of His Highness.

Article 1. There shall be perpetual peace and friendship between the British Government on the one part and Maharajah Dhuleep Sing, his heirs and successors on the other.

Article 2. The Maharajah of Lahore renounces for himself, his heirs and successors, all claim to, or connection with, the territories lying to the south of the River Sutlej, and engages never to have any concern with those territories or the inhabitants thereof.

Article 3. The Maharajah cedes to the Hon'ble Company, in perpetual sovereignty, all his forts, territories and rights in the Doab or country, hill and plain, situated between the Rivers Beas and Sutlej.

Article 4. The British Government having demanded from the Lahore State, as indemnification for the expenses of the war, in addition to the cession of territory described in Article 3, payment of one-and-a-half crore of Rupees, and the Lahore Government being unable to pay the whole of this sum at this time, or to give security satisfactory to the British Government for its eventual payment, the Maharajah cedes to the Honourable Company, in perpetual sovereignty, as equivalent for one crore of Rupees, all his forts, territories, rights and interests in the hill countries, which are situated between the Rivers Beas and Indus, including the Provinces of Cashmere and Hazarah.

Article 5. The Maharajah will pay to the British Government the sum of 60 lakhs of Rupees on or before the ratification of this Treaty.

Article 6. The Maharajah engages to disband the mutinous troops of the Lahore Army, taking from them their arms and

His Highness agrees to reorganise the Regular or Aeen Regiments of Infantry upon the system, and according to the Regulations as to pay and allowances, observed in the time of the late Maharajah Runjeet Sing. The Maharajah further engages to pay up all arrears to the soldiers that are discharged under the provisions of this Article.

Article 7. The Regular Army of the Lahore State shall henceforth be limited to 25 Battalions of Infantry, consisting of 800 bayonets each with twelve thousand Cavalry - this number at no time to be exceeded without the concurrence of the British Government. Should it be necessary at any time - for any special cause - that this force should be increased, the cause shall be fully explained to the British Government, and when the special necessity shall have passed, the regular troops shall be again reduced to the standard specified in the former Clause of this Article.

Article 8. The Maharajah will surrender to the British Government all the guns - thirty-six in number - which have been pointed against the British troops and which, having been placed on the right Bank of the River Sutlej, were not captured at the battle of Subraon.

Article 9. The control of the Rivers Beas and Sutlej, with the continuations of the latter river, commonly called the Gharrah and the Punjnud, to the confluence of the Indus at Mithunkote and the control of the Indus from Mithunkote to the borders of Beloochistan, shall, in respect to tolls and ferries, rest with the British Government. The provisions of this Article shall not interfere with the passage of boats belonging to the Lahore Government on the said rivers, for the purpose of traffic or the conveyance of passengers up and down their course. Regarding the ferries between the two countries respectively, at the several ghats of the said rivers, it is agreed that the British Government, after defraying all the expenses of management and establishments, shall account to the Lahore Government for one-half the net profits of the ferry collections. The provisions of this Article have no reference to the ferries on that part of the River Sutlej which forms the boundary of Bhawulpore and Lahore respectively.

Article 10. If the British Government should, at any time, desire to pass troops through the territories of His Highness the Maharajah, for the protection of the British territories, or those of their Allies, the British troops shall, on such special occasion, due notice being given, be allowed to pass through the Lahore territories. In such case, the officers of the Lahore State will afford facilities in providing supplies and boats for the passage of rivers, and the British Government will pay the full price of all such provisions and boats, and will make fair compensation for all private property that may be damaged. The British Government will, moreover, observe all due consideration to the religious feelings of the inhabitants of those tracts through which the army may pass.

Article 11. The Maharajah engages never to take or to retain in his service any British subject - nor the subject of any European or American State - without the consent of the British Government.

Article 12. In consideration of the services rendered by Rajah Golab Sing of Jummoo, to the Lahore State, towards procuring the restoration of the relations of amity between the Lahore and British Governments, the Maharajah hereby agrees to recognise the Independent sovereignty of Rajah Golab Sing in such territories and districts in the hills as may be made over to the said Rajah Golab Sing, by separate Agreement between himself and the British Government, with the dependencies thereof, which may have been in the Rajah's possession since the time of the late Maharajah Khurruck Sing, and the British Government, in consideration of the good conduct of Rajah Golab Sing, also agrees to recognise his independence in such territories, and to admit him to the privileges of a separate Treaty with the British Government.

Article 13. In the event of any dispute or difference arising between the Lahore State and Rajah Golab Sing, the same shall be referred to the arbitration of the British Government, and by its decision, the Maharajah engages to abide.

Article 14. The limits of the Lahore territories shall not be, at any time, changed without the concurrence of the British Government.

Article 15. The British Government will not exercise any interference in the internal administration of the Lahore State, but in all cases or questions which may be referred to the British Government, the Governor-General will give the aid of his advice and good offices for the furtherance of the interests of the Lahore Government.

Article 16. The subjects of either State shall, on visiting the territories of the other, be on the footing of the subjects of the most favoured nation.

This Treaty, consisting of sixteen articles, has been this day settled by Frederick Currie, Esquire, and Brevet-Major Henry Montgomery Lawrence acting under the directions of the Right Hon'ble Sir Henry Hardinge, G.C.B., Governor-General, on the part of the British Government, and by Bhaee Ram Sing, Rajah Lal Sing, Sirdar Tej Sing, Sirdar Chuttur Sing Attareewalla, Sirdar Runjore Sing Majeethia, Dewan Deena Nath and Faqueer Nooroodddeen, on the part of the Maharajah Dhuleep Sing, and the said Treaty has been this day ratified by the seal of the Right Hon'ble Sir Henry Hardinge, G.C.B., Governor-General, and by that of His Highness Maharajah Dhuleep Sing.

Done at Lahore, this ninth day of March, in year of Our Lord one thousand eight hundred and forty-six; corresponding with the tenth day of Rubbee-ool-awul, 1262 Hijree, and ratified on the same date.

(Sd.) H. Hardinge (L.S.)
(Sd.) Maharajah Dhuleep Sing (L.S.)
Bhaee Ram Sing (L.S.)
Rajah Lal Sing (L.S.)
Sirdar Tej Sing (L.S.)
Sirdar Chuttur Sing Attareewalla (L.S.)
Sirdar Runjore Sing Majeethia (L.S.)
Dewan Deena Nath (L.S.)
Faqueer Nooroodddeen (L.S.)

ANNEXURE-I-2

Text of Treaty of Amritsar

Treaty between Maharaja Gulab Singh and the Government of India, 16 March 1846.

Treaty of Amritsar

The British Government having demanded from the Lahore State, as indemnification for the expenses of the war, payment of one-and-a-half crores of rupees; and the Lahore Government being unable to pay the whole of this sum at this time, or to give security satisfactory to the British Government for its eventual payment; the Maharaja cedes to the Honourable Company, in perpetual sovereignty, as equivalent for one crore of rupees, all his forts, territories, rights and interests, which are situated between the rivers Beas and Indus, including the provinces of Kashmir and Hazara. In consideration of the services rendered by Raja Gulab Singh of Jammu to the Lahore State, towards procuring the restoration of the relations of amity between the Lahore and British Government, the Maharaja hereby agrees to recognise the independent sovereignty of a Gulab Singh, in such territories and districts in the hills as may be made over to the said Raja Gulab Singh by separate agreement between himself and the British Government, with the dependencies, hereof, which may have been in the Raja's possession since the time of the late Maharaja Kharrak Singh; and the British Government, in consideration of the good conduct of Raja Gulab Singh, also agrees to recognise his independence in such territories and admit him to the privileges of a separate treaty with the British Government.

Treaty between the British Government on the one part and Maharaja Gulab Singh of Jammu on the other concluded on the part of the British Government by Frederick Currie, Esquire, and Brevet-Major Henry Montgomery Lawrence, acting under the orders of the Right Honorable Sir Henry Harding, G.C.B., one of Her Britannic Majesty's Most Honorable Privy Council, Governor-General of the possessions of the East India Company, to direct and control all their affairs in the East Indies and By Maharaja Gulab Singh in person.

ARTICLE I

The British Government transfers and makes over, forever, in independent possession, to Maharaja Gulab Singh and heirs male of his body, all the hilly or mountainous country, with its dependencies situated to the Eastward of the river, Indus and Westward of the river Ravi, including Chamba and excluding Lahol, being part of the territories ceded to the British Government by the Lahore State according to the provisions of Article IV of the Treaty of Lahore dated 9th March, 1846 A.D.

ARTICLE II

The Eastern boundary of the tract transferred by the foregoing Article to Maharaja Gulab Singh shall be laid down by commissioners appointed by the British Government and Maharaja Gulab Singh respectively for that purpose and shall be defined in a separate engagement after survey.

ARTICLE III

In consideration of the transfer made to him and his heirs by the provisions of the foregoing Articles, Maharaja Gulab Singh will pay to the British Government the sum of seventy five lakhs of rupees (Nanakshahi), fifty lakhs to be paid on ratification of this treaty and twenty-five lakhs on or before the 1st of October of the current year, 1846 A.D.

ARTICLE IV

The limits of the territories of Maharaja Gulab Singh shall not be at any time changed without the concurrence of the British Government.

ARTICLE V

Maharaja Gulab Singh will refer to the Arbitration of the British Government any disputes or questions that may arise between him and the Government of the Lahore or any other neighbouring State and will abide by the decision of the British Government.

ARTICLE VI

Maharaja Gulab Singh engages for himself and his heirs to join with the whole of his military forces, the British troops when employed in the hills or in the territories adjoining his possessions.

ARTICLE VII

Maharaja Gulab Singh engages never to take or retain in his service any British subject nor the subject nor the subject of any European or American State without the consent of the British Government.

ARTICLE VIII

Maharaja Gulab Singh engages to respect, in regard to the territory transferred to him, the provisions of the Articles, V, VI, VII of the separate engagement between the British Government and the Lahore Darbar, dated 11th March, 1846 A.D.

ARTICLE IX

The British Government will give its aid to Maharaja Gulab Singh in protecting his territories from external enemies.

ARTICLE X

Maharaja Gulab Singh acknowledges the supremacy of the British Government and will in token of such supremacy present annually to the British Government one horse, twelve perfect shawl goats of approved breed (six male and six female) and three pairs of Kashmiri shawls. This Treaty consisting of the above Articles has been this day settled by Frederic Currie Esq. and Brevet-Major Henry Montgomery Lawrence, acting under the directions of the Right Honorable Sir Henry Harding, and by Maharaja Gulab Singh in person and the said Treaty has been this day ratified by the seal of the Right Honorable Sir Henry Harding, G.C.B., Governor General.

Done at Amritsar this sixteenth day of March in the year of our Lord, 1846, corresponding with the seventeenth day Rabi-ul-Awwal 1264 Hijri.

(Signed) (Seal)

H. Harding Maharaja Gulab Singh
(Signed) (Signed)
F. Currie H. M. Lawrence
By order of the Right Honourable the Government of India
(Signed)
F. Currie Secretary to the Government of India with the Governor-General

Copy of the Final Receipt for the purchase of Kashmir, dated Lahore, the 30th March, 1850, Signed by the Board of Administration.

The Honourable the East India Company having received from His Highness the Maharaja Gulab Singh the sum of Rupees 75,00,000 (seventy five lakhs) in payment of the amount guaranteed by the III Article of the Treaty between the Hon'ble Company and His Highness, dated Amritsar, the 16th March, 1846. The single acknowledgement of the receipt of the whole amount is granted by the Board of Administration for the affairs of the Punjab, at the request of Diwan Jawala Sahai, in addition to the receipt already given to His Highness' agents by the receiving officers, for the installments received by them from time to time between the date of the Treaty and the 14th of March 1850, the day on which the last installment was paid into the Lahore Treasury.

(Punjab Government Record Office Museum)

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Treaty of Amritsar
16th March, 1846

The treaty between the British Government on the one part and Maharajah Gulab Singh of Jammu on the other concluded on the part of the British Government by Frederick Currie, Esq. and Brevet-Major Henry Montgomery Lawrence, acting under the orders of the Rt. Hon. Sir Henry Hardinge, G.C.B., one of her Britannic Majesty's most Honourable Privy Council, Governor-General of the possessions of the East India Company, to direct and control all the affairs in the East Indies and by Maharajah Gulab Singh in person - 1846.

Article 1

The British Government transfers and makes over forever in independent possession to Maharajah Gulab Singh and the heirs male of his body all the hilly or mountainous country with its dependencies situated to the eastward of the River Indus and the westward of the River Ravi including Chamba and excluding Lahol, being part of the territories ceded to the British Government by the Lahore State according to the provisions of Article IV of the Treaty of Lahore, dated 9th March, 1846.

Article 2

The eastern boundary of the tract transferred by the foregoing article to Maharajah Gulab Singh shall be laid down by the Commissioners appointed by the British Government and Maharajah Gulab Singh respectively for that purpose and shall be defined in a separate engagement after survey.

Article 3

In consideration of the transfer made to him and his heirs by the provisions of the foregoing Article Maharajah Gulab Singh will pay to the British Government the sum of seventy-five lakhs of rupees (Nanukshahee), fifty lakhs to be paid on or before the 1st of October of the current year, 1846 A.D.

Article 4

The limits of territories of Maharajah Gulab Singh shall not be at any time changed without concurrence of the British Government.

Article 5

Maharajah Gulab Singh will refer to the arbitration of the British Government any disputes or question that may arise between himself and the Government of Lahore or any other neighbouring State, and will abide by the decision of the British Government.

Article 6

Maharajah Gulab Singh engages for himself and heirs to join, with the whole of his Military Forces, the British troops when employed within the hills or in the territories adjoining his possessions.

Article 7

Maharajah Gulab Singh engages never to take to retain in his service any British subject nor the subject of any European or American State without the consent of the British Government.

Article 8

Maharajah Gulab Singh engages to respect in regard to the territory transferred to him, the provisions of Articles V, VI and VII of the separate engagement between the British Government and the Lahore Durbar, dated 11th March, 1846.

Article 9

The British Government will give its aid to Maharajah Gulab Singh in protecting his territories from external enemies.

Article 10

Maharajah Gulab Singh acknowledges the supremacy of the British Government and will in token of such supremacy present annually to the British Government one horse, twelve shawl goats of approved breed (six male and six female) and three pairs of Cashmere shawls.

This Treaty of ten articles has been this day settled by Frederick Currie, Esq. and Brever-Major Henry Montgomery Lawrence, acting under directions of the Rt. Hon. Sir Henry Hardinge, Governor-General, on the part of the British Government and by Maharajah Gulab Singh in person, and the said Treaty has been this day ratified by the seal of the Rt. Hon. Sir Henry Hardinge, Governor-General.

Done at Amritsar the sixteenth day of March, in the year of our Lord one thousand eight hundred and forty-six, corresponding with the seventeenth day of Rubee-ul-Awal (1262 Hijri).

(Signed) H. Hardinge (Seal)
(Signed) F. Currie
(Signed) H.M. Lawrence

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The documents of the Amritsar treaty signed between the British Government and Maharaja Gulab Singh have gone missing. The original copy of the Amritsar treaty signed on 16th March, 1846, by the then Governor-General of British India, Sir Henry Hardinge, and Maharaja Gulab Singh has gone missing in the state.

The Amritsar treaty was the outcome of Article 4 of the Treaty of Lahore signed on March 9, 1846.

Article 1 of the Amritsar treaty which approved the formation and transfer of Jammu and Kashmir state to Maharaja Gulab Singh read: "The British Government transfers and makes over, forever, independent possession to Maharaja Gulab Singh and the heirs, all the hilly or mountainous country, with its dependencies, situated to the eastward of the Indus and westward of the Ravi, including the Chamba and excluding Lahore, being part of the territory ceded to the British Government by the Lahore state, according to the provisions of Article 4 of the Treaty of Lahore, dated 9th March, 1846."

The document of the Amritsar treaty has a historical background and is linked with the existence of Jammu and Kashmir as a princely state.

Maharaja Gulab Singh, then Army chief of Sikh rule, purchased the valley from the British Government for Rs. 75 lakh which was to be paid in two instalments.

Article 3 of the treaty defined the transaction between the two, which read: "In consideration of the transfer made to him and his heirs by the provisions of the foregoing articles, Maharaja Gulab Singh will pay to the British Government Rs. 75 lakh (Nanakshahi), Rs. 50 lakh to be paid on ratification of this treaty, and Rs. 25 lakh on or before the 1st of October of the current year, 1846 A.D."

The document had 10 articles which emphasised on the Maharaja accepting the supremacy of the British Government on the state and as a token of this, Maharaja Gulab Singh agreed to present the British Government annually one horse, 12 perfect shawl goats of approved breed (six male and six female) and three pairs of Kashmir shawls. This was mentioned in Article 10 of the treaty.

Documents of the treaty being classified in nature were never revealed to public.

"Some say the treaty was written on gold-plated sheets, some say it was silver whereas some say it was copper plate. But it is very unfortunate if the documents have gone missing," said Bashir Ahmad, a historian.

An official of the state Archives department, said, "I can't tell you where the documents of the Amritsar treaty are, but I can tell you the documents are not with our department."

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{TREATY between the BRITISH GOVERNMENT on the one part and MAHARAJAH GULAB SING of JUMMOO on the other, concluded on the part of the BRITISH GOVERNMENT by FREDERICK CURRIE, ESQUIRE and BREVET-MAJOR HENRY MONTGOMERY LAWRENCE, acting under the orders of the RIGHT HONOURABLE SIR HENRY HARDINGE, G.C.B., one of HER BRITANNIC MAJESTY'S MOST HONOURABLE PRIVY COUNCIL, GOVERNOR-GENERAL, appointed by the HONOURABLE COMPANY to direct and control all their affairs in the EAST INDIES, and by MAHARAJAH GULAB SING in person, 1846.

ARTICLE 1

The British Government transfers and makes over forever, in independent possession, to Maharajah Gulab Sing and the heirs male of his body, all the hilly or mountainous country, with its dependencies, situated to the eastward of the river Indus and westward of the river Ravi, including Chumba, and excluding Lahul, being part of the territories ceded to the British

Government by the Lahore State, according to the provisions of Article IV of the Treaty of Lahore, dated 9th March, 1846.

ARTICLE 2

The eastern boundary of the tract transferred by the foregoing Article to Maharajah Gulab Sing shall be laid down by Commissioners appointed by the British Government and Maharajah Gulab Sing respectively for that purpose, and shall be defined in a separate engagement after survey.

ARTICLE 3

In consideration of the transfer made to him and his heirs by the provisions of the foregoing Articles, Maharajah Gulab Sing will pay to the British Government the sum of seventy-five lakhs of Rupees (Nanukshahee), fifty lakhs to be paid on ratification of this Treaty, and twenty-five lakhs on or before the first of October of the current year, 1846 A.D.

ARTICLE 4

The limits of the territories of Maharajah Gulab Sing shall not be at any time changed without the concurrence of the British Government.

ARTICLE 5

Maharajah Gulab Sing will refer to the arbitration of the British Government any disputes or questions that may arise between himself and the Government of Lahore or any other neighbouring State, and will abide by the decision of the British Government.

ARTICLE 6

Maharajah Gulab Sing engages for himself and heirs to join, with the whole of his Military Force, the British troops, when employed within the hills, or in the territories adjoining his possessions.

ARTICLE 7

Maharajah Gulab Sing engages never to take or retain in his service, any British subject, nor the subject of any European or American State, without the consent of the British Government.

ARTICLE 8

Maharajah Gulab Sing engages to respect, in regard to the territory transferred to him, the provisions of Articles V, VI, and VII of the separate engagement between the British Government and the Lahore Durbar, dated 11th March, 1846.

ARTICLE 9

The British Government will give its aid to Maharajah Gulab Sing in protecting his territories from eternal enemies.

ARTICLE 10

Maharajah Gulab Sing acknowledges the supremacy of the British Government, and will in token of such supremacy present annually to the British Government one horse, twelve perfect shawl goats of approved breed (six male and six female), and three pairs of Cashmere shawls.

This Treaty, consisting of ten articles, has been this day settled by Frederick Currie, Esquire, and Brevet-Major Henry Montgomery Lawrence, acting under the directions of the Right Honourable Sir Henry Hardinge, G.C.B.., Governor-General, on the part of British Government, and by Maharajah Gulab Sing in person; and the said Treaty has been this day ratified by the seal of the Right Honourable Sir Henry Hardinge, G.C.B., Governor-General.

Done at Amritsar, the sixteenth day of March, in the year of our Lord one thousand eight hundred and forty-six, corresponding with the seventeenth day of Rubbee-ool-awul 1262.

Hijree H. HARDINGE
F. CURRIE
H.M. LAWRENCE

By order of the Right Honourable the Governor-General of India.

F. CURRIE

Secretary to the Government of India, with the Governor-General.

From: C.U. Aitchison, ed. A Collection of Treaties, Engagement

ANNEXURE-J1

Preamble Section-3, Secton-5, Section-147 of the Constitution of J&K

PREAMBLE:

Pursuance of accession of this State to India which took place on the twenty-sixth day of October, 1947, **to further define the existing relationship of the State with the Union of India as an integral part thereof, and to secure to ourselves.**

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship; **EQUALITY** of status and of opportunity; and to promote among us all;

FRATERNITY, assuring the dignity of the individual and the unity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this seventeenth day of November, 1956 do hereby adopt enact and give to ourselves this constitution.

PART II

THE STATE

Section (3): The State of Jammu and Kashmir is and shall be an integral part of the Union of India.

Section (4): The territory of the State shall comprise all the territories which on the fifteenth day of August, 1947, were under the sovereignty or suzerainty of the Ruler of the State.

Section (5): The executive and legislative power of the State extends to all matters except those with respect to which

Parliament has power to make laws for the State under the provisions of the Constitution of India.

PART XII
AMENDMENTS OF THE CONSTITUTION

147. An amendment of this constitution may be initiated only by the introduction of a Bill for the purpose in the Legislative Assembly and when the **Bill is passed in each House by a majority of not less than two-thirds of the total membership of the House,** it shall be presented to the Sadar-e-Riyasat for his assent and, upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that a Bill providing for the abolition of the Legislative Council may be introduced in the Legislative Assembly and passed by majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting:

Provided further that no Bill or amendment seeking to make any change in:

(a) **this section;**

(b) **the provisions of the sections 3 and 5; or**

(c) **the provisions of the constitution of India as applicable in relation to the State; shall be introduced or moved in either house of the Legislature.**

ANNEXURE-J2

Section 6 of J&K Constitution Section 144 of J&K Constitution

PART III
PERMANENT RESIDENTS

Section (6) (l) **Every person, who is, or is deemed to be, a citizen of India under the provisions of the Constitution of**

India, shall be a permanent resident of the State, if on the fourteenth day of May, 1954.

(a) he was a State subject of class I or of class II: or

(b) having lawfully acquired immovable property in the State, he has been ordinarily resident in the State for not less than ten years prior to that date.

(2) Any person, who, before the fourteenth day of May, 1954, was a State subject of Class I or of Class II and who, having migrated after the first day of March, 1947, to the territory, now included in Pakistan, returns to the State under a permit for resettlement in the State or for permanent return issued by or under the authority of any law made by the State Legislature shall on such return be a permanent resident of the State.

(3) In this section, the expression "State subject of Class I or of Class II" shall have the same meaning as the State Notification No. I-L/84 dated the twentieth of April, 1927, read with State Notification No. 13/L dated the twenty-seventh of June, 1932.

Section 144. The flag of the State shall be rectangular in shape and red in colour with three equidistant white vertical stripes of equal with next to the staff and a white plough in the middle with the handle facing the stripes.

The ratio of the length of the flag to its width shall be 3 : 2.

(Please read a portion of Delhi Agreement, 1952 to better understand the objective and status of State Flag.)

The Delhi Agreement, 1952

iv. The Union Government agreed that the State should have its own flag in addition to the Union flag, but it was agreed by the State Government that the **State flag would not be a rival of the Union flag; it was also recognised that the Union flag should have the same status and position in Jammu and Kashmir as in the rest of India,** *but for historical reasons connected with the freedom struggle in the State, the need for continuance of the State flag was recognised.*

ANNEXURE-J3

Section 26 to 29, Section 90 to 92 of J&K Constitution

PART V
THE EXECUTIVE
THE SADAR-E-RIYASAT

Section 26. (1) The Head of the State shall be designated as the Sadar-e-Riyasat.

(2) The executive power of the State shall be vested in the Sadar-e-Riyasat and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(3) Nothing in this Section shall:

(a) be deemed to transfer to the Sadar-e-Riyasat any functions conferred by any existing law on any other authority; or

(b) prevent the State legislature from conferring by law functions on any authority subordinate to the Sadar-e-Riyasat.

Section 27. The Sadar-e-Riyasat shall be the person who for the time being is recognised by the President as such:

Provided that no person shall be so recognised unless he:

(a) is a permanent resident of the state;

(b) is not less than twenty-five years of age; and

(c) has been elected as Sadar-e-Riyasat by a majority of the total membership of the Legislative Assembly in the manner set out in the First Schedule.

Section 28. (1) The Sadar-e-Riyasat shall hold office during the pleasure of the President.

(2) The Sadar-e-Riyasat may, be writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provision of this section, the Sadar-e-Riyasat shall hold office for a term of five years from the date on which he enters upon his office:

Provided that he shall notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

Section 29. A person who holds or has held office as Sadar-i-Riyasat shall, subject to the other provisions of this Constitution, be eligible for reselection to that office.

Section 30. (1) The Sadar-e-Riyasat shall not be a member of either House of Legislature and if a member of either House be elected and recognised as Sadar-e-Riyasat, he shall be deemed to have vacated his seat in the House on the date on which he enters upon his office as Sadar-e-Riyasat.

Section 90. No Act of the Legislature and no provision in any such Act shall be invalid by reason only that some recommendation required by this Constitution was not given, if assent to that Act was given by the Sadar-e-Riyasat.

Legislative power of the Sadar-e-Riyasat:

Section 91. (1) If at any time, except when both Houses of the Legislature are in session, the Sadar-e-Riyasat is satisfied that circumstances exist which render it necessary for him to take immediate action; he may promulgate such Ordinances as the circumstances appear to him to require.

Provided that the power of making Ordinance under this Section shall extend only to those matters with respect to which the Legislature has power to make laws.

(2) An Ordinance promulgated under this section shall have the same force and effect as an Act of the Legislature assented to by the Sadar-e-Riyasat, but every such Ordinance:

(a) shall be laid before both the Houses of the Legislature, and shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature, or if before the expiration of that period, a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, upon the resolution being agreed to by the Legislative Council, and

(b) may be withdrawn at any time by the Sadar-e-Riyasat.

Explanation: Where the Houses of the Legislature are summoned to re-assemble on different dates the period of six weeks shall be reckoned from the latter of those dates for the purposes of this sub-section.

Breakdown of Constitutional Machinery.

Section 92. (1) If at any time the Sadar-e-Riyasat is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the Sadar-e-Riyasat may by Proclamation:

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or excercisable by anybody or authority in the State;

(b) make such incidental and consequential provisions as appear to the Sadar-e-Riyasat to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provision of this Constitution relating to any body or authority in the State:

Provided that nothing in this section shall authorise the Sadar-e-Riyasat to assume to himself any of the powers vested in or exercisable by the High Court or to suspend in whole or in part the operation of any provision of this Constitution relating to the High Court.

(2) Any such Proclamation may be revoked or carried by a subsequent Proclamation.

(3) Any such Proclamation, whether varied under sub-section (2) or not, shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate on the expiration of six months from the date on which it was first issued.

(4) If the Sadar-e-Riyasat by a Proclamation under this section assumes to himself any of the powers of the legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by an Act of the Legislature, and any reference in this Constitution to any Acts of or laws made by the Legislature shall be construed as including a reference to such law. No Proclamation under sub-section (1) shall be issued except with the concurrence of the President of India.

(6) Every Proclamation under this section shall, except where it is a Proclamation revoking a previous Proclamation, be laid before each house of the Legislature as soon as it is convened.

ANNEXURE-K

Text of Indira Sheikh Accord, 1974

1. The State of Jammu and Kashmir which is a constituent unit of Union of India, shall, in its relation with the Union, continue to be governed by Article 370 of the Constitution of India.

2. The residuary powers of legislation shall remain with the State; however, Parliament will continue to have power to make laws relating to the prevention of activities directed towards disclaiming, questioning, disrupting the sovereignty and territorial integrity of India or bringing about secession of a part of the territory of India from the Union or causing insult to the Indian National Flag, the Indian national Anthem and the Constitution.

3. Where any provision of the Constitution of India had been applied to the State of Jammu and Kashmir with adaptations and modifications, such adaptations and modifications can be altered or repealed by an order of the president under Article 370, each individual proposal in this behalf being considered on its merits, but provisions of the Constitution of India already applied to the State of Jammu and Kashmir without adaptation or modification are unalterable.

4. With a view to assuring freedom to the State of Jammu and Kashmir to have its own legislation on matters like welfare measures, cultural matters, social security, personal law and procedural laws in a manner suited to the special conditions in the State, it is agreed that the State can review the laws made by Parliament or extended to the State after 1953 on any matter relatable to the Concurrent List and may decide which of them in its opinion, needs amendment or repeal. Thereafter,

appropriate steps may be taken under Article 254 of the Constitution of India. The grant of President's assent to such legislation would be sympathetically considered. The same approach would be adopted in regard to laws made by Parliament in future under the Proviso to clause 2 of the Article. The Government shall be consulted regarding application of any such law to the State and the views of the State Government shall receive the fullest consideration.

5. As an arrangement reciprocal to what has been provided under Article 368, a suitable modification of that Article as applied to the State should be made by Presidential order to the effect that no law made by the legislature of the State of Jammu and Kashmir, seeking to make any change in or in the effect of any provision of the Constitution of the State of Jammu and Kashmir relating to any of the undermentioned matters, shall take effect unless the bill, having been reserved for the consideration of the President, receives his assent; the matters are {a} the appointment, powers, functions, duties, privileges and immunities of the Governor, and {b} the following matters relating to Elections, namely the superintendence, direction and control of Elections by the Election Commission of India, eligibility for inclusion in the electoral rolls without discrimination, adult suffrage and composition of the Legislative Council, being matters specified in Sections 138, 139, 140 and 50 of the Constitution of the State of Jammu and Kashmir.

6. No agreement was possible on the question of nomenclature of the Governor and the Chief Minister and matter is, therefore, remitted to the Principals.

Note: Daya Sagar: *After Sheikh became the CM, a committee was constituted for reviewing the status of laws and it was inferred that no such correction/repealing/medication was necessary and no extensions made till then were bad in intentions/result. Further, one would ask had Indira Gandhi taken any mandate from the Parliament for signing an agreement with an individual of Jammu and Kashmir. Did she take into confidence the people of J&K, some of whom had been till then under the impression that Sheikh was dislodged in 1953* *for an Act something like sedition? Similar type commitments had been made by Jawahar Lal Nehru with Sheikh Mohammed Abdullah as claimed in 1947 and stated with regard to 1952 Delhi Agreement. How could anyone make agreements at the personal level, involving matters of national and international significance with individuals has never been asked by the people of India. But for all this, it is the people of Jammu and Kashmir from all the three major regions {Jammu, Ladakh and Kashmir Valley} who have paid price and are paying even today. Similarly, questions could be raised on the wisdom of the legislators who were in the J&K Assembly in June 2000, when a resolution on the Autonomy was passed without commenting on the Status of Indira Sheikh Accord of 1974 that had been consigned to files after a review exercise. Such like questions need to be answered to enable the common man of J&K make up his mind as regards the needs and affairs of J&K. It is also the duty of New Delhi in their interest to reach the people to re-establish the trueness of New Delhi.*

ANNEXURE-L1

Text of Resolution 1946 of the Congress Working Committee on Kashmir, 21st November, 1946

The Working Committee have previously expressed their disapproval of the activities of Kashmir authorities during the past few months in repressing the people of the State and denying them their normal civil liberties. The Committee had proposed to send a deputation to enquire into these matters in the Kashmir State and had invited the State authorities to cooperate in this task. **The response from those authorities was not satisfactory and conditions in various parts of India delayed any action being taken on the previous resolution.** Recent reports state that the Kashmir authorities are preventing free and fair elections to the State Assembly and have arrested the President and members of the Election Committee of the Kashmir National Conference. **The Committee takes a serious view of the flouting of public opinion and of activities which must reduce the coming elections to a farce.**

ANNEXURE-L2

Text of Statement, 1946 of Mirwaiz Moulvi Yousuf Shahon, Congress Working Committee Resolution, 25th November, 1946

The Congress Working Committee has decided to send a deputation to Kashmir to inquire into the political conditions prevailing here. This interference into the domestic politics of Kashmir is a positive proof of the fact that the Congress leaders still cherish the dream of turning Kashmir into an anti-Pakistan base. The Working Committee has complained that the Kashmir Government has not dealt with the recent affairs in a friendly manner. The people of Jammu and Kashmir are fully aware of the fact that the Congress has no genuine sympathy for them. The tears they are shedding for the Kashmiris are those of crocodile. Behind the smoke screen of the alleged atrocities of the Kashmir Government, the Hindu capitalists want to get the State into their grip, but they should note that all their efforts in this respect are bound to fail.

We do not say that the Kashmir Government should ban the entry of any deputation to Kashmir, but I warn that if it gets terrified at the might of the Congress and strikes an unholy alliance with the National Conference fascists, it will have to face the terrific opposition of the Muslims. And this sinister alliance will be smashed to pieces.

I trust that the Kashmir Government would, in the interest of peace, boldly face the Congress onslaught.

The Congress has obviously taken into its head to enslave the whole of Muslim India. I can say it without any fear of contradiction that the sending of a delegation to Kashmir is a part of the sinister game.

The Muslims of Kashmir have warded off Pt. Nehru's invasion in 1940, 1945 and 1946. Now he is again out to make a fresh attempt and it is the duty of the Kashmir Muslims particularly and all the well-wishers of the country generally to smash up this onslaught.

ANNEXURE-L3

Text of Resolution, Congress Working Committee on States 15th June, 1947

The Committee does not agree with the theory of paramountcy as enunciated and interpreted by the British Government; but even if that is accepted, the consequences that flow from the lapse of paramountcy are limited in extent. The privileges and obligations as well as the subsisting rights as between the States and the Government of India cannot be adversely affected by the lapse of paramountcy. These rights and obligations have to be considered separately and renewed or changed by mutual agreement. The relationship between the Government of India and the States would not be exhausted by lapse of paramountcy. The lapse does not lead to the independence of the States.

□□□

After 1945, the face of Indian State of J&K was allowed to be painted by some to the benefit of external and internal disruptive elements. Not only this, questions like delayed accession of Indian State of Jammu and Kashmir, 'conditional' accession, Article 370 of Constitution of India, dual 'citizenship' for subjects of Jammu & Kashmir and 'commitments' made with Kashmiries have not been adequately addressed even by Government of India for six decades. Even Art-370 of Constitution of India has been pushed into unfair controversies. Affairs concerning the Indian state of J&K have been the victim of mishandling. Local J&K political leadership has been resting her stakes more only on local governance.

In 1950s the school children in J&K were told stories about one Maqbool Sherwani (a 19 yr youth who stood against 'Pakistani' invaders in October 1947) where as in 2014 one would hear more of Maqbool Bhat (founder of JKLF who was sentenced to death in 1968, who allegedly also masterminded hijacking of Indian aeroplane in 1971 to Lahore) who was hanged in Tihar Jail on 11th February 1984. All these years focus has remained more on Kashmir Valley only (just 10% of whole area), still common man there has been no less a sufferer, one would ask 'Why'?

* * *

Daya Sagar

Engineer by profession (Postgraduate Degree 1971), Daya Sagar (born 6-11-1945) is a Senior freelancer scribe. Affairs concerning Indian state of J&K have always remained in his immediate focus. Closely associated with senior bureaucrats, social activists, academicians and political leaders, he writes extensively on education, economy, health, human rights, international relations and social issues. He has to his credit nearly 1000 published articles and 7 books. He has remained associated with several leading socio-cultural voluntary organisations.

He has distinction of having promoted (in 1990s) the idea of Social Audit through Group Research and Audit on Social Programmes. He is working for the welfare of the Physically challenged, underprivileged and 'unheard' people and for development of 'Humanitarian Coefficient'.

Published Books: • J&K Affairs: Mishandled-Misquoted-Miscarried • Jammu and Kashmir State: 1947 Accession: Events Thereafter • Article 370 – Law and Politics • A Look Through the Mist: PDP Self-Rule • History of Delimitation in J&K • Real Face of Article-370 of Constitution of India • Jammu & Kashmir—A Victim.

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